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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884

No. 295. 36

ANTON MILLER AND CHRISTIAN WORLEY, JOHN FINZER, FREDERICK FINZER, RUDOLPH FINZER, AND NICHOLAS FINZER, PARTNERS AS JOHN FINZER AND BROTHERS, APPELLANTS,

vs.

SAMUEL J. FOREE AND EDWARD J. FOREE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED OCTOBER 4, 1882.

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1 *Caption.*

Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the city of Louisville on Monday, October 5th, 1881.

Present: Hon. John Baxter, circuit judge of the United States for the sixth circuit.

ANTON MILLER, CHRISTIAN WORLEY, and JOHN FINZER, FREDERICK Finzer, Rudolph Finzer, & Nicholas Finzer, Partners as John Finzer & Bros., Complainants.

vs.

SAMUEL J. FORCE and EDWARD J. FORCE, Partners as S. J. Force & Co., Defendants.

Be it remembered that heretofore, to wit, on the 15th day of May, 1878, came the complainants, by Hatch & Parkinson and Beattie & Winchester, their counsel, and filed in the clerk's office of said court their bill of complaint against the above-named defendants, which is as follows:

2 *Bill of Complaint.*

Circuit Court of the United States for and for the District of Kentucky.

ANTON MILLER, CHRISTIAN WORLEY, and JOHN FINZER, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, Partners as John Finzer & Bros. } In Equity.

SAMUEL J. FORCE and EDWARD J. FORCE, Partners as S. J. Force & Co.

To the honorable the judges of the circuit court of the United States in and for the district of Kentucky:

Anton Miller and Christian Worley, citizens of the State of Missouri, and residing at St. Louis, St. Louis county, in said State, and John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, citizens of the State of Kentucky, and residing and doing business under the firm name of John Finzer & Bros. at Louisville, in said State, bring this bill against Samuel J. Force and Edward J. Force, citizens of the State of Kentucky, and residing at Louisville, in said State, and partners doing business in said city

3 and State under the firm name of S. J. Force & Co.

And thereupon your orators on oath and say that heretofore and before the bringing of this suit in 1876, Anton Miller and Christian Worley were the true, original, and first inventors of a certain new and useful improvement in tinfoiling tobacco plugs, and in marking the same, which said improvement was not known or used before said invention, and not of more than of their application for a patent, in public use or on sale with their consent or allowance.

And your orators further show unto your honors that the said

Anton Miller and Christoph Worley being, as aforesaid, the inventors of said improvement, and being citizens of the United States, made application to the Commissioner of Patents for letters patent, in accordance with the then existing acts of Congress, and having duly complied in all respects with the conditions and requisitions
of said acts, on the fifth day of December, 1876, letters patent
4 of the United States, signed, sealed, and executed in due form of law to the said invention or discovery were issued to them, whereby there was secured to them, their heirs, executors, administrators, or assigns, for the term of seventeen years from the fifth day of December, 1876, the full and exclusive right of making, using, and vending to others to be used, the said improvement; which said letters patent are now of record in the Patent Office of the United States.

And your orators further show unto your honors that on or about the eighteenth day of January, 1877, the said Anton Miller and Christoph Worley, by an assignment in writing of that date, sold, assigned, and transferred unto John Finzer & Bros., being a firm composed of John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, one-half of all their right, title, and interest in and to said letters patent and invention and any reissue thereof; which said assignment was duly recorded in the Patent Office
5 of the United States.

And your orators further show unto your honors that said Anton Miller and Christoph Worley, with the consent and concurrence of said John Finzer & Bros., having for good and lawful cause surrendered said letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the act of Congress in such case made and provided, they were cancelled, and new letters patent, which were marked "Reissue No. 8069," were, on the 29th day of January, 1878, in due form of law, issued to said Anton Miller, Christian Worley, and John Finzer & Bros., which said last-mentioned reissued letters patent are of record in the Patent Office of the United States, and which, or a certified copy thereof, are here in court ready to be produced.

And your orators further show unto your honors that by virtue of the premises your orators became and now are the sole exclusive owners of said reissued letters patent and the inventions and improvements described therein, and of all the
6 rights and privileges granted and secured, or intended to be granted and secured thereby. And that since they became the owners thereof as aforesaid they have invested and expended large sums of money and have been to great trouble in and about said invention, and for the purpose of carrying on the business of manufacturing tobacco marked as set forth in said patent and making same profitable to themselves and useful to the public, and that said invention has been and is of great benefit and advantage, and that tobacco plugs marked as set forth in said patent have — made *made* according to said invention and sold by your orators in large quantities to great advantage to the public, and that the public have

generally acknowledged and acquiesced in the aforesaid rights of your orators, and your orators believe that they will realize and receive large gains and profits therefrom if infringements by
7 said defendants and their confederates shall be prevented.

Yet the said defendants, well knowing the premises and the rights secured to your orators as aforesaid, but contriving to injure your orators, and to deprive them of the benefits and advantages which might and otherwise would accrue unto them from said invention after the issuing of the revised letters patent, as aforesaid, and before the commencement of this suit, did, as your orators are informed and believe, without the license or allowance and against the will of your orators and in violation of their rights and in infringement of the aforesaid letters patent, unlawfully and wrongfully, and in defiance of the rights of your orators, use the said invention, and did make, construct, use, and vend to others to be used, tobacco plugs, made according to and employing and containing said invention, and that they still continue so to do and that they are threatening to make the aforesaid tobacco plugs in large
8 quantities, and to supply the market therewith, and to sell the same; all in defiance of the rights acquired by and secured to your orators, as aforesaid, and to their great and irreparable loss and injury, and by which they have been and still are deprived of great gains and profits, which they might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed, by the said defendants, by and through their aforesaid unlawful acts and doings.

And your orators further show unto your honors, on information and belief, that said defendants have made and sold large quantities of said tobacco plugs, employing the said invention, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages from the use of the said invention and from the sale of the said tobacco plugs so marked, but to what extent, and how much exactly, your orators do
9 not know, and pray a discovery thereof. And your orators say that the use of the said invention by said defendants, and their preparation for and avowed determination to continue the same, and their other aforesaid unlawful acts, in disregard and defiance of the rights of your orators, have the effect to and do encourage and induce others to venture to infringe said patent, in disregard of your orators' rights.

And your orators further show unto your honors that they have caused notice to be given to said defendants of said infringements, and of the rights of your orators in the premises, and requested them to desist and refrain therefrom; but they have disregarded said notice, and refuse to desist from said infringements, and still continue to make said tobacco plugs in accordance with said invention and to sell the same.

And forasmuch as your orators can have no adequate relief except in this court, to the end that the defendants may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orators
10

as above, and be restrained from any further violation of said rights, your orators pray that your honors may grant a writ of injunction, restraining the defendants from any further construction or sale or use in any manner of said patented invention or any part thereof, in violation of the rights of your orators, as aforesaid, and that the marks and plates for marking tobacco plugs now in possession or use of the said defendants may be removed or delivered up to your orators for that purpose. And also, that your honors, upon the entering of a decree as to the matters above prayed for, may proceed to assess damages to be recovered, under your direction, in addition to the profits to be accounted for by the defendants, as aforesaid, the damages your orators have sustained by reason of such infringement; and that your honor may increase the actual dam-
11 ages so assessed to a sum equal to three times the amount of such assessment under the circumstances of the willful and unjust infringement by said defendants, as herein set forth.

And your orators pray also for a perpetual or preliminary injunction, and for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orators a writ of injunction conformable to the prayer of this bill, and also a writ of subpœna of the United States of America, directed to the said Samuel J. Tobee and Edward J. Fox, and commanding them to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and be required by the principles of equity and good conscience.

ANTON MILLER,
CHRISTIAN WORLEY,
JOHN FINZER & BROS.,
By BEATTIE & WINCHESTER,
Solicitors for Complainants.

12 HAFOH & PARKINSON, &
BEATTIE & WINCHESTER,
of Counsel.

UNITED STATES OF AMERICA, }
District of Kentucky, } ss.

On this fifteenth day of May, 1878, before me personally appeared Nicholas Finzer, one of the above named complainants, who, being by me duly sworn deposes and says: That he has read the foregoing bill of complaint, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

NICHOLAS FINZER.

Subscribed and sworn to before me by Nicholas Finzer, this 15th day of May, A. D. 1878.

JAMES A. BEATTIE,
Comr. C. C. C. U. S. Dist. Ky.

Upon which bill of complaint the following subpœna in chancery issued:

13 *Subpœna.*

The President of the United States of America to Samuel J. Force and Edward J. Force, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in July next, to answer a bill in equity exhibited against them in our said court by John Finzer & Brother, which they shall in nowise omit, under the penalty of the law.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 15th day of May, A. D. 1878, and in the 102 year of our Independence.

[SEAL.] Attest: SAML. R. CRAIG,
C. C. C. K. D.

14 Memorandum.—The defendants are to enter their appearance in the suit in the clerk's office (on or before the 1st day of July next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

SAML. R. CRAIG, *Clerk.*

Upon which subpœna the marshal made the following return, viz:

Marshal's Return.

Executed on S. J. Force by leaving a copy of the within subpœna in chy at his dwelling house with Mrs. Parmelia Force, an adult person, who is a member of his family, and on Edward J. Force by leaving a copy thereof at his usual place of abode, with Mrs. E. V. Force, an adult person, who is a member of his family.

May 17, 1878. R. H. CRITTENDEN,
U. S. Marshal.
By THOS. H. TAYLOR,
Dep. Marshal.

And afterwards, on the 1st day of July, 1878, came the defendants, by Samuel S. Boyd, their counsel, and filed their answer
15 herein, which is as follows:

Ans. of Defts.

The Circuit Court of the United States for the District of Kentucky.

ANTON MILLER and CHRISTIAN WORTLEY, JOHN FINZER, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, Complainants, } In Equity.
against
SAMUEL J. FORCE and EDWARD J. FORCE, Defendants.

These defendants, now, and at all times hereafter, saving and

reserving to themselves all and all manner of exception which may be had or taken to the manifold errors, uncertainties, imperfections, and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much thereof as they are advised it is material for them to make answer unto, answering, say:

That they admit, upon information and belief, that letters patent of the United States were issued to the said Anton Miller
16 and Christian ——, for an alleged improvement in finishing tobacco plugs, as stated in said bill of complaint, but these defendants deny that the said Anton Miller and Christian Worley were the original and first inventors of said alleged improvement, or that said improvement had not been in public use or sale with their consent and allowance for more than two years before their application for a patent, or that said Miller and Worley made their application for said patent in due form of law, or that the said letters patent were lawfully issued and delivered to the said Miller and Worley, or that they obtained any exclusive right in said improvement by virtue of said letters patent.

These defendants, further answering, say that they are not informed except by the said bill of complaint, that a one-half interest in the said letters patent was afterwards assigned to the said
17 John Finzer, Frederick Finzer, and Nicholas Finzer, and they require complainants to make legal proof of any such assignment.

These defendants, further answering upon information and belief, admit that said letters patent so granted to Miller & Worley on the 5th day of December, 1876, were surrendered and reissued on the 29th day of January, 1878, to the said Miller *Miller* as original patentees, and to said John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer as assignees of a one-half interest in said letters patent; but these defendants, upon like information and belief, deny that said patent was surrendered and the reissue thereof obtained by the said Miller and Worley and the said Finzers, as is alleged in said bill of complaint, and aver that said surrender was not made nor said reissue obtained according to law.

These defendants, further answering upon information and
18 belief, deny that the said original patent of December 5th, 1876, was surrendered and the reissue thereof obtained because said original patent was inoperative or invalid by reason of a defective or insufficient specification, or for any cause or reason for which letters patent may be surrendered according to and under the provisions of the statutes in such cases made and provided; and these defendants further allege and insist that if the original patent of December 5th, 1876, had been or were so defective and insufficient as to be inoperative or invalid, such error, defects, or insufficiency did not arise by or from any inadvertency, accident, or mistake, and without any fraudulent intent on the part of the said Miller and Worley, and these defendants insist that the said surrender of the said patent was not for any sufficient valid or lawful cause. And these defendants further allege that said reissue of Jan-

nuary 29th, 1878, is not for the same invention for which
19 the said original letters patent were granted.

These defendants, further answering, deny that the said Miller and Worley and the said Finzer since the said alleged assignment have been in the exercise of the full and exclusive right and liberty thereby granted, and in the exclusive possession of said invention and improvement.

These defendants, further answering, deny that they have at any time or place impressed any marks or letters upon the faces, sides, or other portions of a plug of tobacco during the process of the manufacture of the same, and by the same pressure employed in the making of the plug, but they say they have, since the date of the said reissued patent, impressed letters and marks into or upon the faces of such plugs after the making or manufacture of the same has been completed, and by a force of pressure extra and in
20 addition to that employed in such manufacture, and not otherwise, and that the making of said letters and marks upon the plugs was a separate, distinct, and different operation from the one of making and forming of the plug, and a subsequent one in point of time, and these defendants have vended to others to be used and sold plugs of tobacco so marked and treated, and none other treated otherwise after making, and they have at no time infringed the said reissued patent of complainants.

These defendants, further answering, aver that a large portion of the plug tobacco manufactured and sold by them since the said reissued patent of January 28th, 1878, have been sold without having any marks or letters impressed upon the plugs at all, because in the first place, the making of these impressions is simply an addition to the cost of manufacture; in the second place, the impressing of such marks and letters upon or into the faces of the plugs does
21 them no sort of benefit, mechanically or otherwise; and in the third place, many of the customers of these defendants have positively objected to having such letters and marks upon them at all, on the ground that they were merely advertisements for these defendants' business as manufacturers of tobacco.

And these defendants deny that the said alleged invention of the said Miller and Worley is of any value, except merely as a means of attaching a brand or trademark to the plug of tobacco.

And these defendants further aver that they have never sold any plug of tobacco at an increased price on account of their having such letters or marks impressed upon them, and have never received any profits by reason thereof, unless they received such as the results of advertising their said trade-mark.

These defendants, further answering, say that the letters and marks so made and impressed upon the plugs of tobacco by
22 them are the same which constitute their own trade-mark, which was registered in the United States Patent Office on the 8th day of May, 1877, to wit, the words "Forbe's trade-mark," the essential features of the same being the words "Forbe's" on a drawing or representation of a tobacco leaf, but for no other purpose and in no other way.

These defendants, further answering, say that if the pretended process and product described and claimed in the said reissued patent described in the bill of complaint of complainants herein could be the subjects of a valid patent at all, the said Anton Miller and Christian Worley were not the original and first inventors thereof, but the same, prior to any alleged invention thereof by the said Anton Miller and Christian Worley, was known to and practiced by divers persons, and, among others—

To Clayton S. Fisher, of St. Louis, in the State of Missouri,

23 who had knowledge of the same at that place.

To Joseph Boyce, sometimes of the firm Boyce Brothers, of the same place.

To Andrew DeYoung, of the same place, who had knowledge of the same at the same; and all three of the persons named, Joseph Boyce, Fisher, and DeYoung, live at the same place now.

To the firms of Semter, Collier and Rankin, and to Samuel M. McCartney & Co., and to James A. Jackson & Co., who had knowledge of the same in the place aforesaid.

These defendants, further answering, say that the making of letters and marks on cakes of soap, chocolate, & upon lead and India rubber and paper and other substances by pressure was done long before 1868, and no patent therefor ought have been granted for the same, as it had no novelty.

These defendants, further answering, say they are informed and believe that the said improvement described in the said

24 original and reissued letters patent, or a substantial or a material part thereof, had been anterior to any alleged invention thereof by the said Miller and Worley described in various public works or printed publications, and, among others, in the following:

In letters patent of the United States granted to D. Eaton, April 21st, 1874, No. 150,008, for "plug tobacco."

In the English patent, No. 1396, in 1868, granted to Thomas Cope and George Cope, dated the 28th day of October, 1868, for "improvements in machinery for molding, pressing, and stamping Cavendish and other tobacco into any desired form by suitable die pieces."

In English patent granted to John William Gibson and James Patrick Kennedy, dated the 30th day of April, 1874, and sealed the 23d day of October, 1874, No. 1546, for "improvements in the manufacture of tobacco and oil."

These defendants, further answering upon information and

25 belief, aver that the alleged improvement patented to the said Miller and Worley, as set forth in said bill of complaint, had been in public use or on sale with the consent and allowance of the said patentees for more than two years before their application for a patent.

These defendants, further answering, deny that the said complainants are entitled to the relief, or any part thereof, in their said bill of complaint mentioned.

And these defendants pray the same advantage of their aforesaid

answer as if they had pleaded the several matters and things aforesaid to the bill of complaint in this cause.

Without this, that any other matter or thing in said complainants' bill contained, and not herein and hereby well and sufficiently answered, traversed or denied, confessed or avoided, is true, to the knowledge and belief of these defendants.

26 All of which matters and things these defendants are willing to aver, maintain, and prove as this honorable court shall direct; and they pray hence to be dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

S. J. FOREE.

A. M. STOUT,

Solicitor and of Counsel for the Defendants.

DISTRICT OF KENTUCKY.

On this the 1st day of July, 1878, personally appeared before me Samuel J. Foree, and made oath that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge and belief, except as to matters which are therein stated on information and belief, and as to those matters he believes it to be true.

SAMUEL B. CRAIL, *Clk.*
By HENRY F. CASSIN, *D. C.*

27 And afterwards, on the 5th day of August, 1878, came the complainants by their counsel, and filed their replication herein, which is as follows:

Replication.

Circuit Court of the United States for the District of Kentucky.

ANTON MILLER, CHRISTIAN WORTZ and JOHN FENZEL & BROTHER, *vs.* SAMUEL J. FOREE and EDWARD J. FOREE. } In Equity.

The replication of the above-named complainants to the answer of the above-named defendants.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto, say that they will aver, maintain, and prove their bill of complaint to be true, cer-
28 tain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things

these replians — and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BEATTIE & WINCHESTER,
Solicitors for Complainants.

HATCH & PARKINSON,
BEATTIE & WINCHESTER,
Of Counsel.

And afterwards, at the October term, 1878, to wit, on Tues-
29 day, October 8th, 1878, came the defendants, by A. M. Stout, their counsel, and filed their amended answer herein. Came also the complainants, by James A. Beattie, their counsel, and filed their replication thereto.

The amended answer above referred to is as follows:

Amended Answer.

Circuit Court of the United States in and for the District of Kentucky. In Equity.

ANTON MILLER *et al.* }
vs. } No. 3877.
SAMUEL J. FOREE *et al.*, Defts. }

To the honorable the judges of the circuit court of the United States in and for the district of Kentucky:

The above-named defendants hereby amend their answer, heretofore filed, by adding thereto the following:

Further answering, and in support of their allegation that the said Anton Miller and Christian Worley were and are not the first
30 and original inventors of the alleged improvement set forth in said letters patent, these defendants aver that long anterior to the date of the pretended invention thereof by the said Miller and Worley the same were fully shown and described in certain letters patent, as follows, to wit: Letters patent of the United States granted Charles Seidler, for improvement in plug tobacco, bearing date January 12, A. D. 1875, and numbered 158,604; letters patent of the Kingdom of Great Britain granted William Clark, for buttons, bearing date March 21st, A. D. 1865, and numbered 594, and to Arthur Dunn, for making soap, bearing date August 16, A. D. 1849, and numbered 12740.

Also that the same were so known to and practiced by William M. Welling and Henry B. Rennick and others, of New York city, long anterior to the date of the alleged invention of said Miller and Worley, which facts these defendants expect to show by the testimony of said Rennick, Welling, and others, residents of said
31 city of New York.

Also that the same were so known to and practiced by J. P. Williamson and E. M. Williamson and James M. Venable, at Petersburg, Virginia; which facts these defendants expect to estab-

lish and prove by the testimony of said J. P. and E. M. Williamson, residing at said Petersburg, and by the members of the firm of Sprague, Warner & Co., residents of, and doing business at, Chicago, Illinois, by whom tobacco so marked was sold at said city of Chicago.

Also that the same were so known to and practiced by George Elias Tuckett and John Billings, residents of Hamilton, Canada, and composing the firm of Tuckett & Billings, of said city, manufacturers of tobacco, and by whom tobacco so marked as described in said letters patent was introduced into the United States, at the city of Richmond, Virginia, long anterior to the date of the alleged invention of the said Miller and Worley; which facts these defend-

32 ants expect to show by the testimony of said Tuckett and Billings, and of R. A. Mills, James Pace, and others, residents of the city of Richmond, Virginia.

Further answering, these defendants aver that long anterior to the date of the pretended invention of the said Miller and Worley the said improvements were well known to and practically introduced to the public by the North American Neufchatel Rock Paving Company in Union Square, New York City, and elsewhere, all which will be made to appear by the testimony of John Stuart Smith, superintendent of the North American Neufchatel Rock Works, in East 19th street, in said city, and by other residents of said city.

Further answering, these defendants aver that the said Miller and Worley were and are not the inventors of the said alleged improvement, or any part or portion thereof, but that the same were made known to them by one D. W. De Forest while in their employ at the city of Saint Louis, Missouri, and from whom they, the

33 said Miller and Worley, learned the process and method of manufacture set forth and claimed in said letters patent.

S. J. FOREE.

A. M. STOUT, *Def'ts Sol'r.*
SAM'L S. BOYD, *Of Counsel.*

UNITED STATES OF AMERICA, }
District of Kentucky, } *ss.*

Sam'l J. Foree one of the above-named defendants, being duly sworn, deposes and says, on behalf of himself and his co-defendants, that the above and foregoing amended answer by him subscribed, so far as the contents thereof are within his own knowledge, is true, and so far as the same are stated upon information and belief he verily believes it to be true.

S. J. FOREE.

Subscribed and sworn to before me, this 16th day of September, A. D. 1878.

SAMUEL B. CRAIL, *Clerk.*
HENRY F. CASSIN,
Deputy Clerk U. S. Cir. Ct. Ky. Dist.

34 The replication above referred to is as follows:

Replication.

Circuit Court of the United States for the District of Kentucky.
In Equity.

ANTON MILLER, CHRISTIAN WORLEY and JOHN FINZER & BROTHERS
vs.
SAMUEL J. FORTE and EDWARD J. FORTE.

The replication of the above-named complainants to the amended answer of the above-named defendants.

These replicants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiences of said amended answer, for replication thereunto, say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said amended answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these replicants, without this, that any other matter or thing whatsoever in the said amended answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these replicants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

BEATTIE & WINCHESTER,
Solicitors for Complainants.

HATCH & PARKINSON,
Of Counsel.

And on another day of said October, term, 1878, to wit, on Wednesday, November 27th, 1878, came the defendants, by Samuel S. Boyd, their counsel, and filed a stipulation as to what defendants use, which is as follows:

Stipulation.

Circuit Court of the United States in and for the District of Kentucky.

ANTON MILLER, CHRISTIAN WORLEY and JOHN FINZER, FREDERICK FINZER, RUDOLPH FINZER, and NICHOLAS FINZER, Partners as John Finzer & Bros.
vs.
SAMUEL J. FORTE and EDWARD J. FORTE, Partners as S. J. Forte & Co.
} In Equity.

It is admitted by the defendants herein, through their counsel, that since the 29th day of January, 1878, and prior to the filing of the bill of complaint herein, defendants in their factory at Louisville, Ky., made and finished plug tobacco which they marked, during the process of finishing, by impressing letters or other marks

directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug. In carrying out the process of marking said tobacco the defendants packed the plugs with alternate plates in the finisher, so that they took
37 their permanent set with the impression in them, whereby the impression is preserved ineffaceable. The said plates had the letters that were designed to be impressed into the tobacco stamped therein.

And it is further admitted that the process used by defendants was substantially such as described in complainants' patent sued on in this case.

It is further admitted by defendants that tobacco thus made by them was sold by them, the said defendants, after the 29th day of Jan'y, 1878, and prior to the beginning of this suit, a plug of which tobacco is made an exhibit herein, and marked "Exhibit Force Plug," and identified by E. H. Rydall, notary public. This admission is made for the purpose of saving the expense of proof of the facts herein stated; and it is agreed that this admission may be filed in the case and may be read in evidence with the same effect as if the facts herein stated had been fully proved by evidence
38 taken in accordance with the rules. And it is agreed that complainants may file herewith, without offering before an officer of the court, a certified copy of the patent sued on.

SAML. S. BOYD,
Of Counsel for Defts.

And at another day of said October term, 1878, to wit, on the 30th day of November, 1878, came the complainants, by John E. Hatch, their counsel, and the defendants, by Saml S. Boyd, their counsel, and filed a written stipulation as to offering of patents in evidence, which is as follows:

Stipulation.

United States Circuit Court in and for the District of Kentucky.

ANTON MILLER *et al.*
vs. } Equity. No. 3877.
S. J. FOREE *et al.*

It is hereby stipulated and agreed that the defendants may offer and use in evidence at the hearing of the above-entitled cause, with the same force and effect as if regularly put in evidence be-
39 fore a master, uncertified printed Patent Office copy of the following United States letters patent:

Charles Siedler, "improvement in plug tobacco," dated January 12th, 1875, and No. 158,604.

Also certified copies of the following English letters patent:

Thos. & Geo. Cope, "improvement in machinery for pressing tobacco," dated October 28th, 1868, and No. 3296.

J. W. Gibson *et al.*, "improvement in the manufacture of tobacco," dated April 30th, 1874, and No. 1516.

Wm. Clark, "button" dated March 24, 1865, and No. 594.

JOHN E. HATCH.
Of Counsel for Compl'ts.
SAML S. BOYD,
Of Counsel for Def'ts.

And afterwards, at the February term, 1879, to wit, on Friday, June 6, 1879, came the complainants, by James A. Beattie and John E. Hatch, their counsel. Came also the defendants, by S. S. Boyd, their counsel, and this cause came on to be heard, and the same having been argued by counsel, and the court not being advised of the decree which it is proper to render herein, takes time.

Decree.

And afterwards, at the October term, 1879, to wit, on Wednesday, October 15th, 1879, this cause coming on to be heard on the pleadings, proofs, and having been fully argued by the counsel for the respective parties, it is hereby ordered, adjudged and decreed that the reissued letters patent No. 8050, dated January 29th, 1878, for an improvement in finishing tobacco plugs, granted to Anton Miller, Christian Worley, and John Finzer and Brothers, is valid, so far as relates to the first claim thereof, and that the defendants have infringed said first claim of said letters patent, and they are hereby enjoined from infringing the process described in said patent and referred to in the first claim thereof, and that defendants' account to the complainants for all damages or profits to which they may be held legally entitled by reason of the infringement of said first claim, and that the case is referred to W. O. Harris, Esq., as master, to ascertain and report said damages or profits, and that the complainants do not recover costs.

And on the 18th day of October, 1879, a writ of injunction was issued as follows:

Writ of Injunction.

THE UNITED STATES OF AMERICA, } ss.
District of Kentucky.

The President of the United States of America to Samuel J. Force and Edward J. Force, Greeting:

Whereas Anton Miller and Christian Worley, citizens of the State of Missouri, and John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, partners as John Finzer & Bros., citizens of the State of Kentucky, have filed, on the chancery side of the circuit court of the United States for the district of Kentucky, a bill against you, the said Samuel J. Force and Edward J. Force, and have obtained an allowance for an injunction as prayed for in said bill from the Honorable John Baxter, circuit judge of said court:

Now, therefore, we having regard to the matter in said bill con-

tained, do hereby command and strictly enjoin you, the said Samuel J. Force and Edward J. Force, your agents, workmen, and employees, that you do not infringe upon or violate the first claim of the reissued letters patent No. 8060, dated January 29th, 1878, for improvement in "finishing tobacco plugs," granted to the complainants herein as follows, to wit: "The described process of marking plug tobacco, which consists of impressing letters or other marks directly into the sides of the plug during the process of manufacture and by the pressure employed in making the plug, substantially as described;" and that you do not infringe upon the process described in said patent and referred to in the said first claim thereof, which commands and injunctions you are respectively required to
13 observe and obey until our said circuit court shall make further order in the premises. Hereof fail not, under the penalty of the law thence existing.

Witness the Honorable M. R. Waite, Chief Justice of the United States, this 18th day of October, A. D. 1879, and in the 104 year of the Independence of the United States of America.

[SEAL.] SAML. B. CRAIG, *Clerk.*

Upon which the marshal made the following return, viz:

Marshal's Return.

Executed by delivering a copy of the within writ of injunction to each of the within named Samuel J. Force and Edward J. Force, this 20th day of October, 1879.

R. H. CRITTENDEN, *U. S. M.*
By THOS. H. TAYLOR, *D. M.*

Order Granting Rehearing.

And afterwards, at the February term, 1881, to wit, on Wednesday, February 23d, 1881, came the defendants, by their solicitor, S. S. Boyd, and filed a petition for rehearing of the above-entitled
14 cause, and said petition having been fully considered by the court, it is hereby ordered, adjudged, and decreed that the same be allowed, and that a rehearing of the above-entitled cause be granted as prayed in said petition.

It is further ordered, adjudged, and decreed that the decree heretofore entered ordering an injunction and a reference to a master to assess the damages be, and the same is hereby, vacated.

Whereupon the defendants, by their solicitor, filed their supplemental answer herein.

The petition for rehearing above referred to is as follows:

Petition for Rehearing.

United States Circuit [Court], District of Ky.

ANTON MILLER *et al.*, vs. S. J. FOREE *et al.* } Equity No. 3877.

To the Honorable John Baxter, judge of the circuit court of the United States in and for the district of Kentucky:

45 Your petitioners, Sam'l J. Foree and Edward J. Foree, defendants above named, respectfully represent that on the 15th day of October, 1879, a decree was rendered in this court by your honors adjudging the defendants above, your petitioners, had infringed the first claim of reissued letters patent No. 8060, for "improvement in finishing plug tobacco," bearing date January 29th, 1878, and referring said cause to a master to ascertain and report the damages. No final decree has been entered in said cause, no steps having been taken towards assessing said damages.

Your petitioners further represent that since the entering of said decree against them evidence has come to their knowledge showing, as they believe, that said process described and claimed in said first claim of said reissued letters patent was long anterior to the date of said alleged invention publicly used and practiced by one E. F. Smith and Robert E. Lee, at

46 Evening Shade, in the State of Arkansas, as will appear in and by the testimony of said E. F. Smith, Robt E. Lee, and G. W. Davidson, and T. J. Hudalestine, herewith produced, and marked Exhibit "A," and at page 9-69; to which your petitioner craves leave to refer as part hereof, and from which testimony it will, as your petitioners believe, fully and clearly appear that said Smith and Lee marked plug tobacco in the finisher between the finisher plates at a date long anterior to the date of the alleged invention of said Anton Miller and Christian Worley, patentees aforesaid.

Wherefore, in consideration of the premises, your petitioner prays that they may be allowed to file a supplemental answer herein, setting up the new evidence, and that the said cause may be reheard upon such new evidence.

And your petitioners will ever pray, &c.

S. J. FOREE.
E. J. FOREE.

SAML S. BOYD, *Counsel.*

47 UNITED STATES OF AMERICA, *District of Kentucky.*

Edward J. Foree, one of the above-named petitioners and defendants, being duly sworn, deposes and says the contents of the said petition are true so far as the same are within his own knowledge, and so far as the same are stated on information and belief he verily believes them to be true.

E. J. FOREE.

Subscribed and sworn to before [me], this 22d Feb'y, A. D. 1881.

SAML. B. CRAIL, *Clerk*.
By HENRY F. CASSIN, *D. C.*

The supplemental answer above referred to is as follows:

Supl. Answer.

United States Circuit Court, District of Kentucky. Equity.

ANTON MILLER *et al.*, vs. S. J. FOREE *et al.*

To the honorable the judge of the circuit court of the United States in and for the district of Kentucky:

And now at this day come the defendants above named, and by leave of court first had and obtained, file this their supplemental answer:

These defendants, further answering, allege that long anterior to the date of the alleged invention of said Anton Miller and Christian Worley the said alleged invention described and claimed in said first claim of said Letters Patent was publicly known to and practiced by one E. F. Smith and Rodger E. Lee, at Evening Shade, in the State of Arkansas, as will appear by and by the testimony of said E. F. Smith and Rodger E. Lee, the former residing at Evening Shade, Arkansas, and the latter at Little Rock, in said State, and also by the testimony of one W. Dodd Gerard and T. Y. Huddlestone, both residents of said Evening Shade.

Wherefore these defendants pray as they have heretofore prayed

S. J. FOREE.
E. J. FOREE.

SAML. S. BOYD, *Defts' Counsel.*

UNITED STATES OF AMERICA, *District of Kentucky:*

Edward J. Foree, being duly sworn, deposes and says: I am one of the defendants above named, and know the contents of said supplemental answer; the same is true as within my own knowledge, and so far as stated on information and belief I believe it to be true.

E. J. FOREE.

Subscribed and sworn to before me, this 22d day of Feb'y, A. D. 1881.

SAML. B. CRAIL, *Clerk*.
By HENRY F. CASSIN, *D. C.*

And on the first day of said February term, 1881, to wit, on Friday, May 27th, 1881, came the complainants, by Storm & Peck, Beattie & Wardle, their counsel; came also the defendants, by Samuel S. Boyd, their counsel; the complainants, by their counsel, and filed their replication to the supplementary answer of defendants herein.

50 *Replication.*

The replication above referred to is as follows:

In the Circuit Court of the United States for the District of Kentucky.

ANTON MILLER *et al.*, vs. SAMUEL J. FORCE *et al.* } No. 3877. In Equity.

The replication of Anton Miller, Christian Worley, and John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, partners as John Finzer and Brothers, complainants, to the supplementary answer of Samuel J. Force and Edward J. Force, defendants.

These repliants, saving and reserving unto themselves, and unto each of them, all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain,
51 and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to prove and aver, as this honorable court shall direct, and humbly pray, as in and by said bill they have already prayed.

BEATTIE & WINCHESTER, STERN & PECK,
For Complainants.

Decree.

And afterwards, at the October term, 1881, to wit, on Tuesday, January 3d, 1882, this cause having been reheard on the pleadings, exhibits, proofs, and orders therein; it is decreed, adjudged, and ordered that the bill of complaint herein be, and the same is
52 hereby, dismissed, and that the defendants recover of the complainant their costs herein expended, and that they may have execution, &c.

And thereupon came the complainants, by counsel, and prayed an appeal from the decree herein to the Supreme Court of the United States, which is granted them.

The opinion of the court is as follows:

Opinion of the Court.

ANTON MILLER *et al.* v. SAM'L J. FORCE *et al.*

Complainants sue for an alleged infringement of reissued letters patent No. 8060, issued to them on the 29th of January, 1878. The invention claimed consists of a process for finishing and marking tobacco plugs with an indelicable identifying impression, by one

and the same pressure, by means of compress plates, with draws in relief, whereby the tobacco takes a permanent set with the impression in it and in a finished state, the tobacco having been
53 previously prepared by a forming pressure in the molds. The patent contains two claims—

1st. The described process of marking plug tobacco, which consists in impressing letters or other marks directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug, substantially as described.

2nd. A tobacco plug marked with an impression, substantially as described.

The defendants, among other defenses, allege that Miller and Worley, the parties named in the original patent as the first and original discoverers of the patented process, are not the original discoverers thereof, and aver that said process was understood and applied by the several parties named in the answer before its discovery and use by Miller and Worley.

The case, as it was then presented, was heard by me more than a year ago, when a decree was entered sustaining the 1st
54 claim of the patent, adjudging defendants guilty of infringement, granting an injunction, and ordering an account of profits, etc.; but before the account was taken I granted a rehearing, to enable defendants to put in additional and newly-discovered evidence to sustain the defense of prior discovery and use of the process secured by complainants' patent.

Further evidence was accordingly adduced by both parties bearing on this issue, the most important of which is found in the depositions of Ed. F. Smith and Robert E. Lee. The object of these depositions is to show that the patented process had been discovered, matured, and successfully used by Smith before it was discovered by the patentees. If the depositions of Smith and Lee, his foreman, are true, the defense of prior discovery and use is well sustained. But are these depositions reliable? The witnesses have been
55 severely attacked and successfully impeached in so far as evidence assailing the general character of a witness can discredit their testimony. But this successful assault upon the general character of these two witnesses does not necessarily exclude their testimony from consideration. The law recognizes the possibility of a witness of general bad character telling the truth, and, therefore, permits such witnesses to testify—their evidence to be received for whatever, under the circumstances of the particular case, the tribunal charged with the duty of passing on and deciding the facts may deem it worth. It therefore becomes our duty to consider and decide how much weight ought to be given to the testimony of these witnesses as against the *prima facie* case made by the patent itself. The patent is evidence of its own validity, and hence the burden of proof to invalidate it rests upon the defendants.

56 Every reasonable doubt ought to be resolved against them.

And if proceeding on this hypothesis it shall be found that Smith's alleged discovery, etc., was incomplete and resting on specu-

lation and experiment only, or that the evidence on this point is evenly balanced, it cannot avail to defeat complainants' patent.

Let us now examine the testimony and see how the fact in this regard is.

As preliminary to the main question, it is, perhaps, proper to remark that the defendants on the former hearing contended that complainants' patent had been anticipated by English and American patents issued to other parties; but this defense was rejected as untenable. I still adhere to the opinion then expressed.

Although said several anticipating inventions had been successfully used in marking soap, tobacco, and other substances, with the name of the manufacturers, or with such other trade mark

57 or identifying mark as the manufacturers chose to impress on the product of their labors, neither of such inventors had conceived or clearly developed the precise process which constitutes complainants' discovery; but the prior discoveries reflected more or less light upon this general subject that they did not distinctly suggest the identical idea which constitutes complainants' invention. The surprise is, therefore, not that Smith should have blundered upon the same thought, but that the thing patented had not occurred to some one at an earlier date. Smith says he did conceive the idea and proceeds to detail the different steps taken to develope it. He was a manufacturer in a small way, at a remote place in Arkansas, of plug tobacco, but his means and facilities for carrying on his business were exceedingly limited. He used wooden molds, and finding that the faces

of his models were such as to leave the tobacco with a rough

58 finish, he made an effort to remedy the matter by plating the molds with metal plates fastened on by screws. And discovering that when the molds thus plated were used the screw heads made an impression upon the finished tobacco, he conceived the idea of marking the tobacco with his name, and began at once a course of experiments to mature and develope the thought, and apply it to practicable use. But he found difficulty in giving a satisfactory finish to the tobacco and making the impression permanent. At this point, Lee, his foreman, came to his assistance and advised him to buy a finisher. Thereupon Smith ordered a finisher from a firm in Louisville, whose name is given, and after further consultation with Lee and one C. W. Davidson a jeweller, he employed the latter to make him two nine plates with the letters of his name raised thereon, which he occasionally used in marking two tobacco plugs out of the 180 plug in each finishing

59 process, at intervals from August, 1875, till April, 1876, at which last-named period his factory was seized by the Government, and his business suspended.

Now, if, as has been stated, Smith's evidence is true, the process so discovered and applied by him is a clear anticipation of complainant's discovery. The explanation and the manner in which it has been told is well calculated to impress one with confidence in its truth. Besides, he is contradicted in every material particular by Lee.

But complainants have examined quite a number of witnesses,

who, in addition to testimony impeaching the general character of both Smith and Lee, testify that they bought and sold tobacco manufactured by Smith during the period mentioned, and that they had no recollection of having seen any plug of tobacco marked with Smith's name. This evidence is, notwithstanding its negative character, entitled to a good deal of weight; but defendants re-
60 join first by argument, and then by evidence. Their argument is, that Smith being a manufacturer in but a very small way, using his plates for marking only at intervals, and their only marking, say, one or two plugs out of 180 in each finishing process, it is not unreasonable to suppose that Smith may have marked tobacco in the manner and by the process described by him, and that none of the witnesses examined by complainants should have noticed any of the marked plugs.

And by way of further rejoinder the defts have advanced other and corroborating evidence that has not been questioned. Davidson, who made the marking plates for Smith, and who is shown to be a reputable man, has been examined by defts, and on his examination testified that he had, at or about the time alleged, at Smith's instance and request, made such plates for Smith as herein
61 previously described, and his testimony is confirmed by the production of one of said plates, which bears every indication of genuineness and is identified by Smith, Lee, and Davidson as one of the plates made by the latter and used by Smith in his business.

There is in fact no grounds on which to doubt the truth of this part of the evidence. If, then, said plate was made at the time and for the purpose mentioned, it follows, as the night follows the day, beyond all reasonable doubt, that it was so used.

But this is not all; the conclusions reached and announced in the preceding paragraph are confirmed by the positive testimony of the other witnesses.

Thos. Y. Huddleston, who was at the time of his examination, and for nearly eight years prior thereto, sheriff of his county, and who, so far as this record discloses, notwithstanding the attempt to impeach his credibility, is a reputable citizen, testified that he
62 had purchased plug tobacco from Smith about that time with Smith's name impressed upon it, and he is corroborated by M. W. Wright, one of complainants' witnesses, who, on cross-examination, says that Smith showed him two plugs of tobacco so marked, which Smith, at the time, presented to be his work.

This evidence, supplementing as it does the testimony of Smith, Lee, and Davidson, makes a clear case of anticipation.

Yet complainants contend that Smith never perfected and reduced his alleged discovery to any practical use; that it was merely experimental and incomplete; and in support of this theory they further insist that Smith could not, and did not, impart as fine a finish to his tobacco as was given to the tobacco finished under complainants' process, and that for this and other insuperable difficulties in his way he abandoned the invention in an uncompleted condition.

I cannot, however, concur in this view of the facts. Smith

63 discovered the "process." This he seemed thoroughly to understand, and having applied it successfully to one or two plugs, it required no inventive genius to apply it to others; it is not important that he did not do this. He did not have the necessary facilities, nor the means with which to obtain them, besides the seizure of his factory by the Government, some eight months after his first experiment was made, constrained him to abandon the prosecution of the idea, but he did not so abandon it until he had fully developed the process, & until it was understood by himself, Lee, and Davidson, and this, we think, is enough, under the authority of Collins vs. Ogden, 18 Wallace, 120, to supersede and overthrow complt's' patent.

A decree will be entered dismissing complainant's' bill with costs.

BAXTER, *Judge, &c.*

Order overruling Motion to file Pet. for Rehearing.

And on another day of said October term, 1881, to wit, on
64 Friday, March 10th, 1882, this cause coming on to be heard, upon motion of complainants for leave to file petition for rehearing, the motion is overruled.

And afterwards, on the 16th day of February, 1882, came the parties, by their counsel, and filed their stipulation herein, which is as follows:

Stipulation.

United States Circuit Court, District of Kentucky.

ANTON MILLER *et al.*, }
vs. } Equity. No. 3877.
SAM'L J. FORBE *et al.* }

It is hereby stipulated by and between the counsel for the respective parties herein that the printed records now on file in this court, and marked A, B, C, shall be and constitute the record on appeal to the U. S. Supreme Court.

BEATTIE & WINCHESTER,
Compl'ts' Sol'rs.

SAML. S. BOYD,
Def'ts Counsel.

65 And afterwards, on the 28th day of February, 1882, came the complainants, by their counsel, and filed their appeal bond herein, which is as follows:

Appeal Bond.

Circuit Court of the United States, District of Kentucky.

ANTON MILLER *et al.* vs. SAM'L J. FORBE *et al.*

Know all men by these presents, that we, Anton Miller, Christian Worley, John Finzer, Frederick Finzer, Rudolph Finzer, & Nicho-

las Finzer, principals, and John T. Stier & G. Alberding, sureties, are held and firmly bound unto Samuel J. Force & Edward J. Force in the sum of one thousand dollars, to be paid to the said Samuel J. Force & Edward J. Force, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

66 Sealed with our seals, and dated this twenty-fifth day of February, A. D. 1882.

Whereas the above-named Anton Miller, Christian Worley, John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky at Louisville:

Now, therefore, the condition of this obligation is such, that if the above-named Anton Miller, Christian Worley, John Finzer, Frederick Finzer, Rudolph Finzer, & Nicholas Finzer shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

NICHOLAS FINZER [L. S.]
JOHN F. STIER [L. S.]
G. ALBERDING [L. S.]

67 Sealed and delivered in presence of—
SAML B. CRAIL.
Clerk U. S. Cir. Court.

Approved.
JOHN BAXTER.
U. S. Circuit Judge.

DISTRICT OF KENTUCKY:

I hereby certify that John T. Stier, one of the sureties on the within bond, after being sworn, stated that he was worth the sum of $1,700.00 in property subject to execution; and that G. Alberding, one of the sureties on the within bond, after being sworn, stated that he was worth the sum of $10,000 in property subject to execution. All of said property being in the district of Kentucky.

Witness my hand and seal, this 25th day of February, 1882.

[SEAL.] SAML B. CRAIL, *Clerk.*

The printed records A, B, & C, above referred to, are as follows:

68 COMPLAINANT'S EXHIBIT PATENT.

DEPARTMENT OF THE INTERIOR, UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Anton Miller,

Christian Worley, and John Finzer and Brothers, dated January 29th, 1878, No. 5000, for improvement in finishing tobacco plugs.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this eighteenth day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

W. H. DOOLITTLE,
Acting Commissioner.

[SEAL.]

Reissue.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas Anton Miller and Christian Worley, of St. Louis, Missouri, assignors of one-half their right to John Finzer and Brothers, of Louisville, Kentucky, have presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in finishing tobacco plugs, for which letters patent were issued to them, dated December 5, 1876, which letters having been surrendered, the same have been cancelled, and new letters ordered to issue to them and said assignees, in accordance with said petition, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and have complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimants are adjudged to be justly entitled to a patent under the law;

Now, therefore, these letters patent are to grant unto the said Anton Miller, Christian Worley, and John Finzer and Brothers, their heirs or assigns, for the term of seventeen years from the fifth day of December, one thousand eight hundred and seventy-six, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second.

A. BELL,
Acting Secretary of the Interior.

(Countersigned)

ELLIS SPEAR,
Commissioner of Patents.

[Here follows diagram, marked p. 70.]

A. MILLER & C. WORLEY.

Assignors of one half their right to J. FINCH & Bro.

Fluxing Tobacco Plugs.

No. 8,060. Reissued Jan. 29, 1878.

Fig 1.

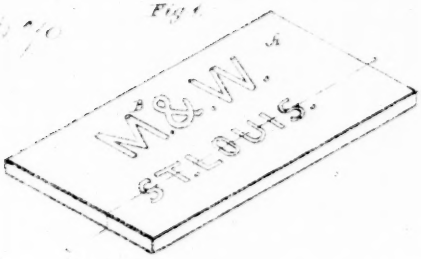

Fig 2.

Fig 3

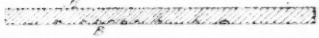

Fig 4

WITNESSES:

W. W. Humphreys Jr.

Edw. W. Byrn

INVENTOR:

A. Miller

C. Worley

BY

Munn & Co.

ATTORNEYS.

71 UNITED STATES PATENT OFFICE.

ANTON MILLER and CHRISTIAN WORLEY, of St. Louis, Missouri, Assignors of one-half their right to John Finzer & Brothers, of Louisville, Kentucky.

Improvement in Finishing Tobacco Plugs.

Specification forming part of letters patent No. 185,119, dated December 5, 1876; Reissue No. 8669, dated January 29, 1878. Application filed December 29, 1877.

To all whom it may concern:

Be it known that we, Anton Miller and Christian Worley, both of the city of St. Louis, and State of Missouri, have invented a new and useful improvement in plug tobacco; and we do hereby declare that the following is a full, clear, and exact description of the same.

Our improvement consists in pressing in the side of the plug, during the process of manufacture, letters or marks, so as to be indefaceable.

The main object is to enable consumers to identify in the plug the tobacco of any manufacturer after it leaves the hands of the latter.

In the drawings, Figure 1 is a perspective view of the plug of tobacco, showing the impression of the letters in the side thereof. Fig. 2 is a face view of part of a compress plate, showing the letters in relief. Fig. 3 is a section through the plug at *x x*, Fig. 1, with the impression at the bottom. Fig. 4 is a section of the compress plate at *y y*, Fig. 2.

A is a plug of tobacco, and at B are shown letters impressed in the side of the same. A' is the compress plate, having at B' letters in relief, by which the impression at B is formed.

72 In carrying out our process, the plugs are packed with alternating plates in the finisher, so that they take their permanent set with the impression in them, whereby said impression is preserved indefaceable.

We have used the process of finishing tobacco as described in patent No. 181,512, issued to Worley and McCabe on the application of Christian Worley, and dated August 22, 1876; but this system of marking may be used in conjunction with the ordinary finishing process by having the devices in relief on pressure plates used in the last pressing.

Our preferred manner of forming the letters on the plates A' is by stamping them therein, and then making the letters solid by filling in the concave side of the letters with melted metal, such as solder, so that said letters will withstand the extreme pressure to which they are subjected in the finishing-box.

In constructing said compress plate, however, any projecting surfaces in relief, either formed upon the plate or loose from the same, would secure the same result and may be employed.

We do not, of course, confine ourselves to any particular words or

letters, as the method may be used in the application of any distinguishing mark.

Having thus described our invention, what we claim as new is—

1. The described process of marking plug tobacco, which consists in impressing letters or other marks directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug, substantially as described.

2. A tobacco plug marked with an impression, substantially as described.

ANTON MILLER.
CHRISTIAN WORLEY

Witnesses:
JOHN F. RYAN
FRED. C. MEHL

73 COMPLAINANTS' EXHIBIT ASSIGNMENT.

DEPARTMENT OF THE INTERIOR, UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment from Miller & Worley to J. Finzer & Bros., recorded in liber H 21, page 252, and that said annexed copy has been compared by me with the original, and that it is a correct transcript therefrom and of the whole of the original.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-first day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

W. H. DOOLITTLE,
Acting Commissioner.

Liber H 21, page 252.

Whereas letters patent bearing date the fifth day of December, 1876, were granted and issued by the Government of the United States, under the seal thereof, to Anton Miller and Christian Worley, of St. Louis, Missouri, for improvement in finishing tobacco plugs, a full and particular description whereof is annexed to said letters patent in a schedule, by which letters patent the full and exclusive right and liberty of making and using the said invention, and of vending the same to others to be used, was granted to the said Anton Miller and Christian Worley, their executors, administrators, and assigns, for the term of seventeen years from the date thereof, which letters patent are numbered 185,139:

Now, therefore, this indenture witnesseth, that the said Anton Miller and Christian Worley, for one thousand dollars paid, and other considerations of value to them delivered, have granted, assigned,

74 and set over, and by these presents do grant, assign, and set over to John Finzer, Fred. Finzer, Rudolph Finzer, and Nicholas Finzer, partners under the firm name of John Finzer & Bros., and their assigns, the one undivided half of all the said

Miller's and Worley's right, title, and interest in the said invention under said letters patent; to have and to hold the said letters patent and invention unto the said John Finzer & Bros., their administrators, executors, and assigns, in full and in as ample manner as to the said undivided half thereof as the said Miller and Worley might have or hold the same were these presents not executed, for and during the rest and residue of said term of seventeen years.

In witness whereof, the said Miller and Worley have hereto set their hands and seals, this 18th day of January, in the year of our Lord 1877.

ANTON MILLER.
CHRISTIAN WORLEY.

STATE OF MISSOURI, }
City, County of St. Louis, } ss.

I, James S. Garland, a commissioner for Kentucky, residing at St. Louis aforesaid, do certify that the foregoing instrument of writing from Anton Miller and Christian Worley to Finzer Bros. was this day produced to me by the parties, and which was acknowledged by the said Anton Miller and Christian Worley to be their act and deed.

In witness whereof, I have hereunto set my hand and official seal, this 23d day of January, 1877.

[L. S.] J. S. GARLAND,
Com. for Kentucky at St. Louis, Missouri.

Recorded Jan. 29, 1877.
Ex'd: H. M. H. E. A. M.

77 *Testimony, taken January 29, 1879.*

In the United States Circuit Court for the District of Kentucky.
In Equity.

ANTON MILLER & CHRISTIAN WORLEY, JOHN FINZER, FREDERICK FINZER, RUDOLPH and NICHOLAS FINZER, Partners as John Finzer and Brothers, Complainants,

vs.

SAMUEL J. FORBE and EDWARD J. FORBE, Defendants.

Examination of witnesses under the sixty-seventh rule in equity, as amended, before E. L. Walbridge, agreed upon as special examiner in this case, at room 100, Lindell Hotel, in St. Louis, Missouri, on the 29th day of January, 1879; by agreement of parties formal notice being waived.

Present: James A. Beattie, Esq., and John E. Hatch, Esq., for complainants; and S. S. Boyd, Esq., for defendants.

EDWARD D. HATCH, being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. HATCH:

Int. 1. What is your business?

A. Salesman; wholesale tobacco business.

Int. 2. How long have you been in the tobacco business?

A. Since 1869—latter part of 1869.

Int. 3. What is the name of the house with which you are connected?

A. L. J. Halthaus.

Int. 4. How long has that house been engaged in the tobacco business?

A. It has been in the name of that firm since 1866; previous to that in the name of C. J. Halthaus was in 1849.

Int. 5. How largely do they deal in tobacco?

A. They do a general trade; manufacturing snuff; sales amount to about $400,000 a year.

Int. 6. How largely do they deal in plug tobacco—how generally?

A. Well, they handle various brands of staple goods.

Int. 7. Come in contact with most all the tobacco that is made here?

A. That is manufactured in the city; yes.

Int. 8. Anything outside?

A. Well, very little.

Int. 9. What is your place of business?

A. 614 North 3rd street, St. Louis, Missouri.

Int. 10. Are you acquainted with the firm of Boyce & Brothers, formerly in the tobacco business?

A. Yes, I know one of the firm.

Int. 11. Which one?

A. Joseph Boyce. I know of the others also.

Int. 12. How near to their place of business?

A. Of late years we have been within two blocks of them.

Int. 13. Did you ever handle any tobacco made by Boyce & Brothers?

A. Yes, sir.

Int. 14. How long since, and to what extent?

A. We have bought various lots in the last four or five years; I can't say exactly the dates we purchased them, but various lots in that time.

Int. 15. What style of tobacco did you buy of that firm?

A. Common grade—six inch.

Int. 16. Did you ever open the caddies of tobacco that you purchased?

A. Yes, sir.

Int. 17. How generally?

A. Well, the tobacco we purchased, it was common to open almost every caddy.

Int. 18. Did you notice the tobacco that you purchased from him, any of it marked in any peculiar manner?

A. No, sir; you mean on the plug?

Int. 19. On the plug.

A. No, sir.

Int. 20. Did you ever see any tobacco which you purchased of

him where the plugs, or any of the plugs, were marked with the word "Blackberry" impressed into the side of the tobacco?

A. No, sir: I never noticed any mark of that kind.

Int. 21. Never noticed any in all you received?

A. No, sir; in none of the tobacco we purchased did I notice any mark on the plug of that description.

Int. 22. Did you ever see any tobacco marked with the trade mark or name of the firm?

A. Yes, sir.

Int. 23. Where did you first see it?

A. The first tobacco I seen of that description was in 1876, the latter part of September or beginning of October, I can't say positively which.

Int. 24. How was it marked?

A. Marked "Miller & Worley, St. Louis," or "St. Louis, Mo." I don't know exactly about that.

Int. 25. Did you ever see any marked tobacco prior to that time?

A. No, sir.

Int. 26. Did you ever hear of any?

A. I did not.

Int. 27. Did you ever see any of Boyce Brothers' tobacco, aside from the lots that your house purchased?

A. Oh, yes; seen it in various wholesale houses round the city.

Int. 28. In any lots you have ever seen, did you ever see any marked with the word "Blackberry"?

A. No, sir, I never did. I have never seen any of their tobacco that I know of, in any shape or form, that was marked.

Int. 29. Nor never heard of any?

78 A. Never heard of any. No, sir.

Int. 30. What is the distinction between hand-cased tobacco, if you know, and dipped tobacco?

A. Well, the difference, as I know, between dipped tobacco and hand-cased tobacco, as a general rule, the way we always have been doing is to sprinkle the leaf on the floor, and then go over it with a broom and sprinkle it with liquorice. The way of dipping tobacco, the way I have seen it done, is to take the tobacco and dip it into a sort of liquorice, run through the roller, and then hang it up to dry, and then work it into plugs.

Int. 31. What is the difference in the tobacco after it is made into plugs?

A. Dipped goods, as a general thing, I have always found to be much sweeter than the tobacco cased by hand; makes the sweetness more uniform.

Int. 32. How about the dampness, as to uniformity?

A. Well, that, I would think, would depend a great deal on how it was cased. A man might case it by hand very heavy, and a man might dip it, and dip it very light, and the goods cased by hand would be more damp, more moist, than the goods dipped. That depends a great deal on how thin the liquorice is.

Int. 33. As the work is ordinarily done, which is the more uniform?

A. By dipping.

Int. 34. When did this method of dipping tobacco come into general use among tobacco manufacturers?

A. All that I know about that would be in our own city to my own knowledge.

Int. 35. In your own city, St. Louis?

A. Yes. I think it came in general use in the last three or four years.

Int. 36. How was tobacco generally made prior to that time in reference to the method of sweetening?

A. Hand-casing. What is called hand-casing.

Cross-examination by S. S. Boyd, Esq.:

X Int. 1. Are you a practical tobacco manufacturer?

A. No, sir. I don't claim to be.

79 X Int. 2. Did you ever manufacture any tobacco?

A. Yes, sir.

X Int. 3. Where?

A. At 614 North Third-street.

X Int. 4. When?

A. Within the last ten years.

X Int. 5. Do you mean by "within the last ten years" during the whole time in the last ten years?

A. No, sir; from 1870 to about 1873, then we quit. Our building was taken down at the time of the opening of the bridge; after that we never started again.

X Int. 6. Since 1873 you have had no practical experience manufacturing tobacco?

A. No, sir; only what I have observed being round about other factories. I myself have not manufactured.

X Int. 7. Have you had any practical experience in manufacturing tobacco by the process of dipping?

A. No, sir.

X Int. 8. How many caddies of tobacco did you ever buy of Boyce Brothers?

A. I would be unable to tell that unless I referred to the books. There was several lots, ten caddies, may have been fifteen, I cannot positively state how many.

X Int. 9. When you say you bought several lots, how many lots do you mean?

A. About three, I should state.

X Int. 10. Then you think you bought of Boyce Brothers about three lots, each lot having about fifteen caddies?

A. From ten to fifteen; I can't say positively unless I refer to the books.

X Int. 11. From whom else besides Boyce Brothers have you bought tobacco?

A. We have bought from Venedie, we have had some, I think, from Lorillard; we have bought from Leggett & Meyers, Miller &

Worley; bought from McCabe, and Finzer & Brothers, of Louisville. At other times we have bought of various factories that I do not now recollect.

80 X Int. 12. From whom do you principally buy now?

A. Leggett & Meyers, and Miller & Worley.

X Int. 13. From which do you buy the most?

A. Leggett & Meyers.

X Int. 14. How much do you buy a year?

A. We purchased from Leggett & Meyers last year, between four and five thousand dollars worth. I know it was over four thousand dollars worth at the beginning of December.

X Int. 15. How much have you bought from Miller & Worley?

A. I suppose Miller & Worley would not reach over two thousand dollars, if that.

X Int. 16. You say the first tobacco you saw marked was marked how?

A. With the name of "Miller & Worley, St. Louis," or, "St. Louis, Mo." I am not positive about the "Mo." being on it or not.

X Int. 17. You say the first tobacco you saw marked had impressed in it the words "Miller & Worley, St. Louis"?

A. "Miller & Worley," in full, "St. Louis."

X Int. 18. When did you first see that?

A. September, 1876, the latter part of September or the beginning of October.

X Int. 19. What was the occasion of you seeing it?

A. I was out at the factory and it had just come out of the finisher, and they handed a plug to me. I took it up the factory and put it in a case for exhibition; I recollect exactly the time, because right after that was the fair, and that tobacco they got out at that time was put in the fair for exhibition.

Signature waived.

GUSTAVE MILLER, being produced, sworn, and examined as a witness, on the part of the complainants, deposes and says:

Direct examination by Mr. HAYCH:

Int. What is your business?

A. Wholesale grocers, firm of McClan & Miller, on Broadway, St. Louis.

81 Int. 2. In your business do you handle tobacco?

A. Yes, sir.

Int. 3. To what extent?

A. Well, just as general wholesale grocers use it, not to any great extent.

Int. 4. How long have you been engaged in that business?

A. Since 1866.

Int. 5. Handling tobacco during all that time?

A. Yes, sir.

Int. 6. Where is your place of business?

A. 1017 Broadway, St. Louis, Missouri.

Int. 7. During the time you have been in business, have you known the firm of Boyce Brothers?

A. Yes, sir.

Int. 8. Engaged in the tobacco business here?

A. Yes, sir.

Int. 9. Have you ever purchased any tobacco from them?

A. Yes, I bought once a small lot from them.

Int. 10. How long since?

A. Well, I can't remember distinctly, but I think it is about four years, may be only three, I can't remember.

Int. 11. What style of tobacco was it?

A. It was what they call Bright Navy, six inch plug.

Int. 12. Did you open those caddies?

A. I had occasion to open one caddy of them.

Int. 13. Do you remember whether any of the tobacco that you purchased from them was marked in a peculiar manner?

A. No, sir; it was just plain tobacco, no mark on it.

Int. 14. Did you see among that tobacco you purchased from them any plugs that were marked with the word "Backberry" impressed into the side.

A. No, sir.

Int. 15. Did you ever see any of their tobacco any other place, aside from that that you had?

A. No.

Int. 16. When did you first hear of tobacco in this market marked with an impression?

82 A. It was in the fall of 1876.

Int. 17. Whose tobacco was it?

A. Miller & Worley's.

Int. 18. Have you ever heard of any tobacco in this market marked with the word "Blackberry"?

A. No, sir.

Int. 19. Never have seen any?

A. No, sir.

Cross-examination by S. S. Boyd, Esq.:

X Int. 1. How largely do you deal in tobacco?

A. Well, not largely; just what wholesale grocers of our range would use.

X Int. 2. About how much a year?

A. Well, I should judge about three or four thousand dollars' worth.

X Int. 3. For how long a time have you been dealing in tobacco to that extent?

A. Ever since 1866.

X Int. 4. Then your trade in tobacco has not increased since 1866?

A. No, sir.

X Int. 5. From how many dealers have you bought tobacco?

A. Well, we bought from Christian Peper, and from Leggett &

Meyers, and from Mr. Boyce once a small lot, Moore & Co., and Miller & Worley.

X Int. 6. How many caddies were there in that small lot you bought from Boyce?

A. I am not positive whether it was five or ten; there may have been ten caddies, may have only been five; so long ago I can't remember.

X Int. 7. How much tobacco have you bought of Miller & Worley?

A. You mean during the year?

X Int. 8. Any time.

A. Sometimes our bill would be $400 a month, and sometimes only fifty or sixty dollars.

82 X Int. 9. When first did it amount to $400 a month?

A. I can't give you positive information in regard to that without looking over my bills.

X Int. 10. From whom else did you buy tobacco to that amount?

A. Leggett & Meyers.

X Int. 11. Which did you buy most from, Leggett & Meyers or Miller & Worley?

A. I think it is about equal.

X Int. 12. Are you any connection of Anton Miller?

A. No, sir.

Re-examination by Mr. Hayden.

R. Int. 20. Why did you not buy more tobacco from Boyce?

A. Because the tobacco was not good enough.

R. Int. 21. What was the trouble with it?

A. It was not good. I could not sell it.

Recross-examination by Mr. Boyd.

R. X Int. 13. Why couldn't you sell it; what was the defect in it?

A. It was sort of dry. People did not like it.

R. X Int. 14. It was put up in improper order, was it.

A. Well, I am no manufacturer, and consequently I can't give any cause for it. I can't say.

R. X Int. 15. The trouble with his tobacco was, it was too dry for your customers?

A. Yes, sir.

Signature waived.

PETER HAUPTMAN, being produced, sworn, and examined as a witness on behalf of the complainants, testified as follows:

Direct examination by Mr. Hayden.

Int. 1. What is your business?

A. I am a dealer in tobacco and cigars.

84 Int. 2. Where is your place of business?

A. 511 North Third street, St. Louis, Missouri.

Int. 3. How long have you been so engaged in that business in this city?

A. About ten years; I would not say exactly, but that is what it is: may be six months, less or more; I don't know.

Int. 4. To what extent have you been engaged in that business?

A. Well, you mean how much the sales have been?

Int. 5. No, not what the sales have been, but whether large or in a moderate degree?

A. Well, when I first started, I sold tobacco on a small scale; afterwards increased the business, and deal in tobacco very largely now.

Int. 6. Did you ever purchase any tobacco of Boyce Brothers?

A. I don't remember that I ever purchased any of Boyce, but I bought Boyce's tobacco.

Int. 7. From whom did you purchase?

A. Brookmire & Rankin, wholesale grocery house.

Int. 8. Tobacco made by them and sold to those parties, and purchased from them by you?

A. Yes, sir.

Int. 9. What style of tobacco was it?

A. There was some white navy, all six-inch work; some white and some mahogany goods.

Int. 10. Was any of that tobacco purchased from those parties, and made by Boyce Brothers, marked in any peculiar manner?

A. No, sir; it was plain.

Int. 11. Did you see any of it that had the word "Blackberry" impressed into the face of the plug?

A. No, sir.

Int. 12. Have you seen any tobacco made by Boyce Brothers, aside from that you purchased—seen any in the hands of other dealers?

85 A. I have seen Boyce tobacco in a good many places, all over the city, here and there, and I have seen it in his own factory also.

Int. 13. Did you ever see any of it that was marked with the word "Blackberry" impressed in the side of the plug?

A. No, sir.

Int. 14. Did you ever hear of any of it that was so marked?

A. I never heard of any of it that was so marked.

Int. 15. When did you first hear of tobacco marked with an impression to identify it?

A. I can't say exactly just when, I think it was in 1876; the first I ever seen was Miller & Worley's.

Cross-examination by S. S. Boyd, Esq.

X Int. 1. How much was there in that lot of tobacco manufactured by Boyce that you bought of Brookmire & Rankin?

A. It was all tobacco manufactured by Boyce.

X Int. 2. How much of it was there?

A. I can't tell exactly; there was some twelve or fifteen caddies, something like that; I don't remember exactly how much; I know it was over ten

X Int. 3. When was that?

A. That is about a year and a half or two years ago.

X Int. 4. That is as near as you can fix it?

A. Yes, sir.

X Int. 5. Was there any reason why you should examine that particularly to see if any of it was marked?

A. Yes.

X Int. 6. What was it?

A. Because it was a lot I bought from a wholesale grocery house; I didn't buy it from the manufactory directly; I bought it second hand, so I examined the goods to see what they were.

X Int. 7. Was that any reason why you should examine it to see if any marks were on it?

A. No; I never had any idea about the mark at that time.

X Int. 8. You examined it to see the quality of it; that is all, was it not?

86 A. Yes, sir.

X Int. 9. What did you do with the tobacco?

A. I sold it.

X Int. 10. The whole of it?

A. Yes, sir.

X Int. 11. Was your attention ever called to the fact, as to whether or not the Boyce tobacco was marked with the word "Blackberry"?

A. No; I never heard of it.

X Int. 12. Was there any reason why you should have heard of it?

A. No.

Signature waived.

By consent the further taking of testimony in this case was adjourned until to-morrow, January 21, at 2 o'clock p. m.

L. L. WALBRIDGE.
Special Examiner.

JANUARY 21st, 1879.

Parties met pursuant to adjournment, and the further taking of testimony in this case was resumed as follows:

PETER HAUPTMAN, being recalled, testified as follows:

By Mr. HATCH:

Int. 1. Were you ever in the factory or sales-room of Boyce Brothers while they were engaged in selling tobacco?

A. Yes, sir.

Int. 2. State how you came to go there.

A. Well, it was either Mr. Boyce himself, or some of his friends, invited me to come round. He had some tobacco he wanted to dispose of, and he wanted to see if I would not buy a lot of goods—buy of him.

Int. 3. State whether you looked over his stock at that time, while you were there, carefully.

A. I went there to his factory, to see if I could make a bargain or not.

87 Int. 4. State whether you looked over the stock he had on hand at that time?

A. Yes; I looked over his stock and examined his goods.

Int. 5. Were there many, three or four varieties?

A. Well, yes; he showed me pretty nearly all the brands, I think, nearly all.

Int. 6. State whether he showed you any tobacco, at that time, with the word "Blackberry" impressed on it on the side of the plug.

A. No, sir. I didn't see any impression in the plug whatever in any of it.

Int. 7. State, if you please, how your business, as a wholesale dealer in tobacco, compares in magnitude with the business of the other wholesale dealers here in the city.

A. Well, I do a great deal of outside business—myself, travel round a good deal to see customers. Some years ago I did nothing else but that; was outside traveling always.

Int. 8. While you were outside, and while traveling around in the city seeing customers, were you accustomed to see the stock they had on hand?

A. Yes. I guess it is a salesman's business if he wants to do any business, he has to do that to find out.

Int. 9. How often were you accustomed to go round in this way at that time?

A. Well, every day in the week.

Int. 10. State whether or not you were accustomed, when going round this way, to see tobacco sold by Boyce Brothers.

A. Yes. I came across, here and there, very often, some goods of Boyce Brothers.

Int. 11. Did you ever see any of it marked with the word "Blackberry"?

A. No, sir.

Int. 12. Now state, if you please, how your business at the present time, as a wholesale dealer in tobacco, compares in size with that of other wholesale dealers here in the city?

A. Well, as much as I know, I would not say positive, but I think I do the largest jobbing business here in the city of any dealer in tobacco.

88 Cross-examination by S. S. Boyce, Esq.:

X Int. 1. What do you mean by saying you "do the largest jobbing business"?

A. I sell more goods, or more than any dealer in tobacco in this city; that is, you know, leaving out manufacturers; I am no manufacturer; I am only jobbing tobacco. I am the largest jobbing house in tobacco and cigars in the city, I think.

X Int. 2. How do you sell, by the caddy?

A. Yes, sir.

X Int. 3. When you were up at Boyce's factory, in what condition was his tobacco, in caddies or unpacked?

A. I examined his goods in the original boxes with the caddies open, you know.

X Int. 4. Did you take the goods all out of the caddies?

A. I took some of it out, not all.

X Int. 5. Did you take all of the goods out of any caddy?

A. No, sir.

X Int. 6. How many caddies did you open?

A. That I can't remember any more; it is some time ago; he showed me all the different samples; you know I generally buy by samples more than boxes.

X Int. 7. When was that?

A. Well, I can't say exactly when it was, something like two years ago; not a great while; it was about the time he wanted to wind up his business, about to sell his stock out that he had on hand.

X Int. 8. The purpose of that examination was to see the quality of the tobacco, was it not?

A. Yes, sir.

X Int. 9. Was anything said at the time, or attention directed to the fact, whether any of that tobacco was marked?

A. There was nothing said about the tobacco being marked.

X Int. 10. When you saw the Boyce tobacco in stock in other stores, what condition was it—open in the caddy?

A. Yes; I seen it in the caddy—open caddies.

X Int. 11. Did you, in the several stores where you saw his goods, see any caddy open and all the tobacco taken out?

80 A. I seen them open—and half boxes opened, two-thirds of it, three-fourths of it, and so on; seen it in all shapes.

X Int. 12. Did you ever see a single caddy in any dealer's shop entirely empty while you were present; that is, all of the tobacco taken out of that caddy?

A. No, sir.

X Int. 13. So, then, there might have been a plug of tobacco having the word "Blackberry" in every single caddy you ever saw and yet you not see it?

A. Well, I don't know. I didn't examine every plug; I never examined his tobacco, except I took pieces out here and there and looked at what the quality of the goods was.

X Int. 14. That is the only purpose for which you ever examined the Boyce tobacco, to see the quality?

A. Yes, sir.

X Int. 15. It didn't concern you whether it had a mark on it or not?

A. No, sir.

X Int. 16. How many times did you ever examine his tobacco for the purpose of seeing its quality?

A. You mean in retail stores?

X Int. 17. Either retail or wholesale stores, or anywhere.

A. I can't tell that; it is a number of years since; I have seen so many varieties of tobacco I can't give any answer how often I seen it.

X Int. 18. I say, how often did you examine it to determine its quality, to determine whether you would buy or not?

A. When I was in Boyce's factory I went to buy a lot of goods from them, and I examined it.

X Int. 19. Did you ever examine anywhere else to determine whether you would buy or not?

A. I examined his goods in different retail stores.

X Int. 20. Did you go to retail stores to buy tobacco for your own purpose?

A. No, sir. My business when I go to a retail store is to take notes, to see what kind of goods they have and what it is. That is a salesman's business, if he wants to do business outside, to always look to see what people have got.

90 X Int. 21. You never examined for the purpose of buying, except this time when you were at Boyce's factory?

A. No, sir, that is only once when at Boyce's factory.

Re-examination by Mr. Hayden:

Int. If any plug that you examined to determine its quality had a large mark on the face of it of the word "Blackberry" impressed in the plug, do you not think you would have noticed it?

A. I should think I would notice it, because a person who examines a piece of tobacco looks at the quality, what it is, notices it, opens and examines it close; I should think he would see whether there was any impression on the plugs or not. It is undoubtedly the case, if it was something new at that time I would have seen that, and taken notice of it, if there had been any of those things on it.

Signature waived.

JOHN A. BELVIN, Jr., being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. Hayden:

Int. 1. In what business are you engaged, and where?

A. I am in the tobacco business, manufacturers' agents, 121 Olive street, St. Louis.

Int. 2. How long have you been engaged in that business?

A. I have been engaged in that business here in St. Louis, since 1869 or 1870.

Int. 3. Have you ever had occasion to handle tobacco made by Boyce & Brothers, of this city?

A. Yes, sir.

Int. 4. To what extent have you handled it?

A. I cannot say to what extent. I handled a good deal of his tobacco, considering the magnitude of his factory; on one or two occasions I got pretty much all the tobacco he had on hand.

Int. 5. Did you examine that tobacco that you purchased?

91 A. Yes, sir.

Int. 6. Did you ever purchase from Boyce Brothers, or see

at their factory, any tobacco, the plugs of which, or any of the plugs of which, had impressed into the face of the plug the word "Blackberry"?

A. No, sir, not to my recollection.

Int. 7. Were you often at his factory or sales-room?

A. At one time I had occasion to be there nearly every day. I had a great deal of unstamped tobacco in the factory that belonged to me, and which was paid for, and we simply used his factory as a bonded warehouse. It took me there often in opening tobacco, drawing samples, and showing the tobacco to parties who were desirous of buying.

Cross-examination by S. S. Boyd, Esq.:

X Int. 1. When you were there for the purpose of drawing out your own tobacco, was it necessary for you to go into his press room?

A. Well, his press room and bonded warehouse room is altogether on one floor. He kept his tobacco piled up on one side of the factory and the presses on the other, the prize room I presume you allude to.

X Int. 2. Did you examine his process of pressing his tobacco?

A. I have been through his factory a good many times and examined his machinery and the process of making his tobacco, and he would occasionally put up lots for me according to my instructions.

X Int. 3. Did you examine his molds?

A. Not critically: I have looked at his molds, simply as any tobacco man would look at molds going into a tobacco factory—simply glance at them, that is about all.

X Int. 4. While they were in use, do you mean, or otherwise?

A. Well, both while in use and otherwise.

X Int. 5. Did you see all the molds he had in the factory?

A. I can't say.

92 X Int. 6. What do you think?

A. I wouldn't like to express my opinion: I can't say. He may have had molds in the factory that were hid away in the cellar or in his garret, which I couldn't see or didn't see.

X Int. 7. Do you think you examined all the molds he had there that he was using?

A. Well, I never went into Boyce's factory with a view of examining the molds: more accidently than otherwise, you may say, my seeing them.

X Int. 8. Then you never really examined his molds?

A. I never gave them a critical examination: I have looked at them, as I stated before, as any tobacco man, interested in tobacco, going into a factory, as a rule, will look round at the machinery, to see about what style of machinery they are using.

X Int. 9. How many molds did he have there?

A. I can't say, sir.

X Int. 10. Do you know how many sets of molds he had?

A. I don't remember.

X Int. 11. Do you know whether he had more than one set of frames?

A. I am quite confident he had more than one set of frames: yes, sir.

X Int. 12. This tobacco that was stored there was tobacco manufactured by Boyce, which you had purchased, was it?

A. Yes, sir.

X Int. 13. When you drew samples, what did you do?

A. Well, I would sometimes take them up and carry them to my office.

X Int. 14. From what part of the caddy did you draw your sample?

A. I usually broke the caddy in the center, and took samples from the center.

X Int. 15. Would you, at the time of doing that, take out all the tobacco in the caddy?

A. All the tobacco—yes, sir; take the solid lump of tobacco right out, break it in the center, and take out the samples.

X Int. 16. Did you, at that time, take each individual plug out from the lunch?

93 A. No, sir.

X Int. 17. Then, I understand the method you adopted was to take the outer casing off, break open the compact lump, and take out a plug and leave the rest still compact in form?

A. Yes, sir.

X Int. 18. So that what remained still in compact form, you know nothing of?

A. Nothing at all.

X Int. 19. Did you ever examine any caddies of tobacco manufactured by him, each plug of the caddy?

A. No, sir.

Signature waived.

J. J. RAILEY, being produced, sworn, and examined as a witness, on the part of complainants, deposes and says:

Direct examination by Mr. DARCH:

Int. 1. In what business are you at present engaged?

A. Wholesale grocery business.

Int. 2. What is the present firm?

A. Wilson & Johnson.

Int. 3. With what firm were you connected along in 1870, or thereabouts?

A. I was with Jackson, Pfouts & Douglass from 1871 or 1872. I disremember now which, 1871, I think, up to the time of their failure, in 1876.

Int. 4. What was the business of that firm?

A. They were wholesale grocers.

Int. 5. Did they deal in tobacco to a considerable extent?

A. Well, yes; they sold a good deal of tobacco.

Int. 6. Do you know whether, or not, they handled any tobacco made by Boyce Brothers, of this city?

A. Yes, sir; sold a good deal of that.

Int. 7. They had more or less all the time?

94 A. I think they had it in stock all the time, sir, pretty much.

Int. 8. Were you accustomed to see that tobacco?

A. Well, yes. I used to sell a good deal of it. I liked Mr. Boyce very well, and tried to make a specialty of it for him. I sold a good deal of it.

Int. 9. Did you ever see any of that tobacco that was marked with the word "Blackberry," the word being impressed into the side of the plug?

A. I never did, sir.

Int. 10. Did you ever, at the time that firm was dealing with Boyce Brothers, hear Mr. Boyce speak of tobacco that he had for sale with the word "Blackberry" impressed into the side of the plug?

A. No, sir.

Int. 11. Did you ever see tobacco made by Boyce & Brothers, in the hands of other dealers, that the word "Blackberry" was impressed in the side of the plug?

A. No, sir.

Cross-examination by S. S. Boyce, Esq.:

X Int. 1. What were your general duties at Jackson, Pfouts & Douglass'?

A. I was principal salesman in the house.

X Int. 2. They didn't retail in smaller quantities than by the caddy?

A. No, sir.

X Int. 3. In selling by the caddy would you take all the tobacco out of the caddy before selling?

A. Oh, no, sir.

X Int. 4. You always sold by the full caddy, did you not?

A. Certainly.

X Int. 5. Did you ever take all the tobacco out of a caddy and examine each plug?

A. I never did, sir.

X Int. 6. Did you in other places, where the Boyce tobacco was being sold, ever make any examination of all the plugs in each caddy?

95 A. Oh, no.

X Int. 7. Then, all you know about it is that you sold a good deal of the Boyce tobacco by the caddy; that you never remember of seeing on any plug of tobacco the word "Blackberry"?

A. I sold a good deal, and sold altogether by the caddy, but by the sample.

X Int. 8. How did you get the sample from the caddy?

A. Took out a caddy, opened it, and took it out.

X Int. 9. Knocked off the head, and took the plug that happened to be on top?

A. Yes; sometimes. Mr. Boyce would fetch sample lots down to us to carry along, without opening a caddy.

Signature waived.

JOHN K. CAMILL, being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. HATCH:

Int. 1. Were you ever acquainted with the firm of Boyce Brothers, engaged in the manufacture of tobacco in this city, along about 1870?

A. Yes, sir; I was employed with them then, and before that.

Int. 2. Tell how you came to know them.

A. When Mr. Boyce went into the tobacco business to start a factory he employed me as foreman to take charge of his factory.

Int. 3. What year was that?

A. 1869; to the best of my opinion, I think 1869—the early part of 1869; cold weather, I know.

Int. 4. How long were you employed in the capacity of foreman?

A. I can't say exactly how long I was with Boyce.

Int. 5. Several months, years, or how?

96 A. I was not there a year. I was there, I suppose, probably three or four months, somewhere along there; I wouldn't swear positive the length of time I was with Boyce.

Int. 6. What were your duties there as foreman?

A. I had charge of the business.

Int. 7. To look after the manner in which the tobacco was made?

A. Yes; I put it up myself.

Int. 8. Please look at the exhibit now shown you, set of molds marked Exhibit "Blackberry," with the word "Blackberry" in brass upon one of the blocks, and state whether or not, while you were foreman of Boyce Brothers' factory, that set of molds was there in use.

A. Never there to my recollection; not to my knowledge; not while I was there; I never seen it, not that I know of.

Int. 9. State whether or not, while you were in their employ, any tobacco was manufactured there with the word "Blackberry" stamped on the face of the plug.

A. No, sir; none that I know of.

Int. 10. Had there been any such molds in use there at that time, or had there been tobacco so made, could it have been done without your knowledge?

A. Not well, because I seen all the stock made; I examined all the stock, and I seen the boxes packed, and manufactured the stock myself.

Cross-examination by S. S. Boyd, Esq.:

X Int. 1. When did you go into the employ of Boyce Brothers?

A. I think it was in 1869.

X Int. 2. How long did you stay there?

A. I can't positively say how long I staid there; I can't tell now, it has been so long; I can't tell whether I staid there one month or six months. Well, I can say more than one month, I suppose; I don't remember, possibly three or four months, but I can't say exactly the time. I was with him there when he started his factory.

97 X Int. 3. After you left Boyce Brothers where did you go?

A. I think I went to work then for the St. Louis Transfer Company; I think that is the first work I went at.

X Int. 4. Who was superintendent at that time of the company?

A. Mr. Werner. Porter Werner was superintendent at that time.

X Int. 5. How long did you remain in the employ of the Transfer Company?

A. I staid in the Transfer Company some years; I don't know exactly how many years now. I staid there, I think, from somewhere in the neighborhood of August 25th; I went to work there, I think, in 1869, until about the time—well, I was there after the bridge was built sometime, running 'busses just after the bridge was built sometime, I don't know exactly how long, for the St. Louis Transfer Company was running 'busses for the Cairo Short Line, and I recollect coming across the bridge several times, and after that I went to work as conductor on the bridge.

X Int. 6. Is that as near as you can fix it when you gave up your employ by the Transfer Co.?

A. Well, I never paid no particular attention to what time I left there; I know it was after we run across the bridge, after the bridge was built, and I know the 25th of August, 1869, I went to work at the Transfer Co.

X Int. 7. How long after leaving Boyce Brothers did you go to work for the Transfer Co.?

A. I can't tell exactly the time; I was idle between the time I left and the time I went to work there; it was somewhere about a year, I think.

X Int. 8. You were idle entirely from the time you left Boyce Brothers until the time when you went into the employ of the Transfer Co.?

A. Well, I don't know whether I went into his shop; I think I went down and worked a little while for Dousman, but not but a little while, I think; I know a very short time, not more than a few weeks, I don't think.

X Int. 9. Will you state positively you did work for Dousman?

98 A. I will not, but I think I did. I did work a week or two; I know it was not paying, and I didn't stay there.

X Int. 10. Did you ever work for Dousman any other time?

A. I worked for Dousman before ever I worked for Boyce.

X Int. 11. Prior to going with Boyce, for whom were you at work?

A. Well, I can't tell exactly. I hadn't worked at the business for

some time before I went to Boyce', a year or two; I believe it was more than that, for I had been some time in the fire department in 1868, I think.

X Int. 12. Did you go directly from the fire department to Boyce's?

A. No, sir.

X Int. 13. Who was chief of the fire department while you were with them?

A. Well, I went in—I worked under Mr. Hull, and the last man I worked under in the fire department was Mr. Barnes.

X Int. 14. I don't ask who you worked under, I ask who was chief of the department?

A. When I went into the fire department?

X Int. 15. Yes.

A. Well, I think, the time I went into the fire department, it was Mr. Stevens.

X Int. 16. Can you no more than think about it—have you any certainty in regard to the matter?

A. Well, I am pretty positive it was Mr. Stevens.

X Int. 17. What year did you go in the department?

A. I have no recollection. I never kept no account.

X Int. 18. Can you give any idea as to the time?

A. No, sir; nothing I could swear to.

X Int. 19. Prior to going into the fire department, what were you engaged in doing?

A. I was working, I believe, at the tobacco business then?

X Int. 20. Are you certain you were?

A. I know I worked at the tobacco business before that.

99 X Int. 21. Immediately prior to going into the fire department?

A. Well, I worked a good many years in my life. I can't tell exactly what I did work at.

X Int. 22. Can you tell what you were doing immediately prior to your going into the fire department?

A. Well, I can't tell any more than what I think. I just think it was in the tobacco business I was at, at that time.

X Int. 23. With whom were you in the tobacco business prior to going into the fire department?

A. Well, I can't tell. I worked for a good many of them. I can't tell who I worked for.

X Int. 24. Who was the last person you worked in the tobacco factory for prior to going to the fire department?

A. I can't tell that; I don't know exactly who; not positive of that.

X Int. 25. Give the names of anybody for who you worked in a tobacco factory prior to going to the fire department?

A. I worked for Meyers, in Alton.

X Int. 26. What time?

A. I can't tell what year that was.

X Int. 27. Can you give any idea of it?

A. It might have been the year before that; I worked for Price about 1856 or 1857. I worked for Skinner, Edson & White.

X Int. 28. But you can't tell for whom you worked prior to going to the fire department?

A. No, sir, I cannot swear.

X Int. 29. What were your duties at the last tobacco factory you worked at prior to going into the fire department?

A. Well, prior to going into the fire department, the last duty I done, I believe, was making lumps; I did work in the capacity as foreman for Barker, in St. Louis, and went on to Covington, and worked as foreman there in Covington; and after I came back from him I think I worked after that—well, I don't know whether I went to work any more after that in a tobacco factory. I can't positively tell.

X Int. 30. When did you come back from Covington?

100 A. I can't tell that; I don't recollect; I never kept account of years.

X Int. 31. How many years before you went to the fire department?

A. Well, I can't tell you that.

X Int. 32. How many years were you in the fire department?

A. Well, I suppose between two and three years.

X Int. 33. What were your duties in the fire department?

A. I was driver and I was pipeman.

X Int. 34. To what engine?

A. Well, I drove the fuel wagon up at headquarters, and then I was changed from that and sent down to 5th and Almond, and drove a fuel wagon there, and was changed from that to pipeman afterwards.

X Int. 35. Now, can you state how long you were at Boyce's factory?

A. No, I can't tell positive.

X Int. 36. Were you there six months?

A. I wouldn't swear to any length of time I was there.

X Int. 37. Do you know when he started his factory?

A. I know he started early in the spring—cold weather; I am positive of that.

X Int. 38. Can you fix the date when you went to the fire department any better now?

A. No, I can't; I could find out if I could go around and get——

X Int. 39. What did you say your duties were at Boyce's when he started the factory?

A. I was his foreman.

X Int. 40. What did you do?

A. I had charge of the factory.

X Int. 41. Entire charge?

A. Yes; I packed the leaf, cased it, and manufactured it.

X Int. 42. You say positive no mold was there with the word "Blackberry" on it, while you were there?

A. Not that I ever seen.

101 X Int. 43. Will you swear there — none such here?

A. I will swear there were none to my knowledge.

X Int. 44. Will you swear there couldn't have been one there without your knowing it?

A. Well, I will swear there couldn't have been one there to my knowledge; if there without my knowing it; I can't see how it could be there without my knowing it; none I ever knew of while I was in the shop, I never seen it.

X Int. 45. Who were the pressmen there?

A. They had a man named Cantwell, a pressman, and he had a man helping him to press.

X Int. 46. Who were some of the other employees at the time you first went there?

A. Another, I don't know; an old man—a crippled man named John, about all the name I recollect. He used to help around the shop; used to sleep in the shop.

X Int. 47. Anybody else in the employ besides those you mention?

A. Oh, yes. Another man, I think, named Charley Scanlan.

X Int. 48. Who else?

A. Well, I don't recollect who the rollers were, I can't place the rollers.

X Int. 49. Anybody in the office?

A. A while afterwards, I know while I was there, Charley Loker came there to learn the business; he was in there when I was learning him.

X Int. 50. Anybody else there?

A. Well, nobody excepting Boyce & Brother used to come in and out there.

X Int. 51. Who attended to the sales there?

A. Well, Mr. Boyce, I guess, attended to the sales altogether; I went out once or twice with him to the warehouse, a few times he used to call me up.

X Int. 52. What are you doing now?

A. I am doing nothing, walking round, I haven't done nothing for some time.

X Int. 53. How long have you been doing that?

102 A. I think about next April will be three years since I have done anything, I guess.

X Int. 54. How do you live?

A. My means keep me, sir.

X Int. 55. You are a man of independent fortune, are you?

A. Well, I am not, but I haven't got down so low that I have to work at anything; I have a little money, a little income, and I try to live on it till I have something to suit me to go to work at.

X Int. 56. Who first spoke to you about this matter?

A. Mr. Worley asked me if I knew anything about this.

X Int. 57. When did he ask you?

A. Oh! well, some time ago. I don't recollect, probably two months ago, may be a little more.

X Int. 58. Where was it he asked you?

A. He met me on the street, I believe, or somewhere; I don't know exactly where it was he met me now.

X Int. 59. He is the only one you have conversed with about his?

A. I never spoke to anybody about it, only him alone, about this business, till I met his partner to-day, and got an introduction to him. He asked me if I would come down here, and I said I would; he never said anything about anything else. He wanted to know if "I would be in," and I told him "Yes," and he told me "To get down about three o'clock."

X Int. 60. Is this the first time your attention was called to the matter, when Mr. Worley spoke to you?

A. No; he spoke some time ago, if I would go down, if I would give my evidence, and I told him I would, and I met him since yesterday; I think that is the only time. Might have talked probably, I don't know, as he never spoke to me about coming down here; the only time was yesterday, I think the first time he spoke of me coming down. I met him occasionally, but we didn't always talk about that, we talked about anything, times or anything else.

X Int. 61. When, prior to this conversation with Mr. Worley, was your attention called to the fact of those molds before?

A. Prior to the conversation?

X Int. 62. Yes.

103 A. No, sir; I never had anybody to ever speak of it that I know of.

X Int. 63. Prior to Mr. Worley's speaking to you, never heard of molds of this kind ever being, or having been, in existence, did you?

A. Well, I don't know; I don't recollect ever seeing them molds only one day somewhere; I don't recollect where I noticed a stamp; I can't swear positive whether "Blackberry," or what, but it has been of late years, since I have been out of the business altogether, since I left Boyce, I noticed "Blackberry," or some sign of some kind, but it has never been since I first went to the tobacco factory; I never seen it till I first seen it lately.

X Int. 64. What do you mean by lately?

A. Since I quit the business.

X Int. 65. What date do you fix it at?

A. I haven't worked in the business since 1869; that I am positive.

X Int. 66. Then, since 1869, you have seen tobacco that you think was marked "Blackberry"?

A. I have seen that, as a matter of course, either at the fair or somewhere else on signs, or with tags in a cigar store, where I would go in to get a cigar, or anything; I have seen these signs around in these cigar stores and such places.

X Int. 67. When did you see tobacco with the word "Blackberry" on it?

A. Oh, I can't say; I can't swear; but I have never seen it in my days in the tobacco business.

X Int. 68. Your days in the tobacco business ended in 1869?

A. Yes, August, I think; I went to work about the 25th of August for the St. Louis Transfer Company, and have never worked at the tobacco business since.

X Int. 69. Your connection with the tobacco business ended in 1869; now, how long after your connection with the tobacco business ceased was it you saw tobacco with the word "Blackberry" on it?

A. I can't say that; I can't answer the question at all.

X Int. 70. Two years?

104 A. I can't answer the question; I don't know; might have been a year ago; I never paid attention; I don't know whether it was "Blackberry." I wouldn't swear positive it was, but I have seen the stamps here, tags and things.

X Int. 71. When did you first hear of a set of molds being in existence with the word "Blackberry" on it?

A. I can't tell you.

X Int. 72. You heard of it before Mr. Worley mentioned this matter to you, did you not?

A. Well, I wouldn't swear to that.

X Int. 73. Will you swear you did not?

A. No; I won't swear to that; I will swear it never was in my time.

X Int. 74. Your time runs to 1869 only?

A. That is what I say.

X Int. 75. You can't give us any idea at how late a period after 1869 it was you first heard of a set of molds, being in existence with the word "Blackberry" on it?

A. No, sir.

Signature waived.

JAMES H. BROOKMIRE, being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. HAYCH:

Int. 1. What is your business?

A. Wholesale grocers, 101 N. Second street, St. Louis, firm of Brookmire & Rankin.

Int. 2. How long have you been engaged in the general grocery business?

A. Eleven years.

Int. 3. As a general grocer, do you deal in tobacco?

A. Yes, sir.

Int. 4. To some considerable extent?

105 A. I sell not any great amount of tobacco, but do a good deal of business.

Int. 5. I believe your firm is one of the largest wholesale groceries in the city.

A. We do, probably, the largest business here.

Int. 6. While your firm were engaged in wholesale grocery business did you ever handle any tobacco made by Boyce Brothers?

A. We have handled Boyce's tobacco, yes, sir.

Int. 7. To some extent?

A. Yes, we sold considerable of it at one time, in fact, up to the time they quit.

Int. 8. Did you ever examine that tobacco, sample it, open the caddies?

A. We have, same as any other tobacco, yes, sir.

Int. 9. In the tobacco your house sold for Boyce Brothers, did you ever observe any plugs stamped with the word "Blackberry" on the face of the plug?

A. Not on the plug; no, sir.

Int. 10. Did you ever hear of tobacco being sold in this market with the word "Blackberry" stamped on the face of the plug?

A. No, sir.

Int. 11. Have you ever seen Boyce Brothers' tobacco, except that that was sold by you?

A. Well, yes, I have seen the tobacco; I never examined it particularly, except when interested in buying or selling; I have been in their place of business a number of times.

Int. 12. Did you ever see in their place, or in any of their tobacco that you have seen in the hands of other parties, any plugs with the word "Blackberry" stamped on the face of it?

A. I never did; no, sir.

Cross-examination by S. S. Boyd, Esq.:

X Int. 1. You were at that time one of the members of the house, were you?

A. Yes, sir.

1065 X Int. 2. Is it the duty of members of the house to examine carefully the tobacco?

A. It is mine; I examine all my own goods.

X Int. 3. What way did you examine that tobacco?

A. Same as anything else—looked at it particularly.

X Int. 4. Take every plug out of the caddy?

A. Take out enough to convince me the tobacco was what I bought.

X Int. 5. You examined it to determine its quality?

A. Yes, that is what I buy it on—style and quality.

X Int. 6. Did you ever open a caddy and take each separate plug and examine it?

A. I have taken out some plugs in a box—not all the plugs.

X Int. 7. Might there not have been, in each caddy you examined, a plug with the word "Blackberry" on it, and you not see it?

A. There might have been, but not very likely there would be, without it was all stamped.

X Int. 8. What do you mean—"not likely to be one if not all stamped"?

A. I say it is supposed if I took a sample of tobacco what is in that box, all alike; I might open the center or the end.

X Int. 9. Alike as to what?

A. In style and general make up of the tobacco.

X Int. 10. Do you say that there might not have been a plug of tobacco with the word "Blackberry" in each one of those caddies you examined and you not see it?

A. I say there was no word "Blackberry" on the tobacco I did examine.

X Int. 11. Do you mean by that no word "Blackberry" on any tobacco in the caddy?

A. I can't say.

X Int. 12. Did you ever, in any place, examine a caddy of tobacco by examining each plug in the caddy?

A. No, sir; it is not customary at all.

X Int. 13. It not being customary, you would not do it?

A. Well, I took out a sufficient number of plugs to satisfy
107 myself it is what I bought, and that the quality was such as I was convinced was good.

X Int. 14. It would not be customary for any dealer in sampling a caddy of tobacco to take the tobacco entirely out and examine each plug?

A. Certainly not.

X Int. 15. He would examine the tobacco sufficiently to determine the character of the tobacco as to quality?

A. Yes, sir.

X Int. 16. An examination of a few plugs would enable you to determine that generally, would it not?

A. Yes, sir.

X Int. 17. When you were at Boyce's factory did you make a particular examination of the process of manufacturing?

A. No, sir. I have been invited through his factory several times by Mr. Boyce himself, but never took particular notice, more than the general run of it.

X Int. 18. You don't know what sort of molds they were using there?

A. No, sir; I do not.

Re-examination by Mr. Hayes.

R. Int. 13. When Mr. Boyce showed you through the factory he never called your attention to any particular method of marking tobacco, did he?

A. No, sir.

R. Int. 14. In a casual observation of the molds did you ever see any molds with the word "Blackberry" upon them so as to be stamped in the plug?

A. No, sir; I never did.

Recross-examination by Mr. Boyd.

R. X Int. 19. Do you mean to say you ever examined his molds?

108 A. No, sir; I saw his press there with the molds in it filled with tobacco.

R. X Int. 20. You could not see the face of the molds?
A. No, sir; I never examined the molds at all.
Signature waived.

JOHN A. LADD, being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. HATCH:

Int. 1. What business are you engaged in?
A. Tobacco business.
Int. 2. In what capacity?
A. A salesman.
Int. 3. How long have you been engaged as salesman, selling tobacco?
A. About eight or nine years.
Int. 4. During the time you have been employed as salesman, have you been accustomed to see various styles of tobacco sold among the trade?
A. Yes, sir.
Int. 5. What is your residence?
A. Chicago; that is my present residence.
Int. 6. State whether or not you were formerly from St. Louis.
A. I am from St. Louis.
Int. 7. How long from 1870–2–3 or 1874, or in that locality, what house were you selling for?
A. Moore & Company, of St. Louis.
Int. 8. At that time were you accustomed to see various brands and styles of St. Louis tobacco in the public sale here in the city and elsewhere?
A. Yes, sir.
109 Int. 9. During this time, or at any time, have you seen tobacco sold by Boyce Brothers, of St. Louis?
A. Very often.
Int. 10. Have you ever seen any tobacco made by them stamped with the word "Blackberry" in the face of the plug?
A. No, sir.
Int. 11. Have you ever heard of such tobacco?
A. I never have.

Cross-examination by Mr. BOYD:

X Int. 1. Moore & Co. are wholesale grocers, are they not?
A. At the time I was with them they were manufacturers' agents.
X Int. 2. What did they deal principally in?
A. In nails, tobacco, coal oil, and a variety of other stuff.
X Int. 3. Which was their largest item?
A. Tobacco, I think.
X Int. 4. For what parties were they manufacturers' agents, as far as tobacco was concerned?
A. Turpin & Bro. of Richmond, Robert W. Oliver, of Richmond, and for a time, Spicer, also, I think, of Richmond. They were man-

ufacturers' agents, at least Moore & Co. were, and accepted consignments from any manufacturers they could get from.

X Int. 5. Did you deal largely in St. Louis manufactured tobacco?

A. No, sir.

X Int. 6. Were you agents for any of the St. Louis houses?

A. No, sir.

X Int. 7. How came you to see Boyce's tobacco?

A. I think we purchased some of them, at one time.

X Int. 8. How much?

A. I don't know.

X Int. 9. When?

A. I can't tell you.

110 X Int. 10. Sure you purchased any?

A. Yes, sir.

X Int. 11. How much?

A. I don't know, I was simply a salesman; I don't know anything about purchases.

X Int. 12. But you sold it?

A. I don't think I did sell any of it.

X Int. 13. Well, then, how do you know they bought any of it if you did not buy and did not sell it?

A. I saw it in the house, and knew they bought.

X Int. 14. Can you tell anything about the amount?

A. No.

X Int. 15. Did you examine all the tobacco?

A. Yes, sir.

X Int. 16. How?

A. Looked at the plugs.

X Int. 17. To what extent?

A. Just as I looked at any plug tobacco; took it out and looked at it.

X Int. 18. Was the tobacco all opened out of the caddy?

A. Oh, no.

X Int. 19. Did you open a caddy and take the plugs out?

A. I don't remember whether I opened it, or the porter; I think the porter, though.

X Int. 20. Did you examine a single plug in the caddy?

A. I did; yes, sir.

X Int. 21. How many?

A. Several, probably.

X Int. 22. Several caddies or plugs?

A. Several caddies.

X Int. 23. How many plugs in several caddies?

A. Oh, one, two, or three; I don't know how many.

X Int. 24. How were the caddies opened, at the top?

A. On the side.

X Int. 25. Sawed through?

A. Oh, no; a little lid knocked off.

111 X Int. 26. Did you examine any plugs below the surface plug?

A. Took them out of the center; I think that is the way I should do if I would examine them.

X Int. 27. How did you get the plugs out?

A. By breaking the tobacco in two.

X Int. 28. Then you didn't simply take the side off, as you said before?

A. We took the side off to get the tobacco out of the caddy, of course.

X Int. 29. Now, let us understand each other; you took the tobacco in the lump out of the caddy?

A. Yes; precisely.

X Int. 30. And broke it open and examined how many plugs?

A. Oh, two or three, may be four; I can't say how many.

X Int. 31. Such as were on the surface of the lump when broken in two?

A. Yes, sir.

X Int. 32. You didn't see every plug in that caddy, did you?

A. No, sir.

X Int. 33. You don't know what was on the plugs you did not examine, do you?

A. No, sir.

X Int. 44. Where else did you see Boyce's tobacco?

A. I have seen it around in various places.

X Int. 45. Did you make a careful examination of the plugs at various places round where you saw it?

A. Not a very careful examination; as a tobacco salesman, of course I looked at it, scrutinized it, and wondered how good it was.

X Int. 47. Did you make any more careful examination, or as careful as you made of your own stock?

A. Certainly.

X Int. 48. You made as careful an one as you made of your own stock?

A. Yes, sir.

112 X Int. 49. When did you leave Moore & Co.?

A. I left Moore & Co. in 1874.

X Int. 50. Whose employ are you in now?

A. Lorillard's.

X Int. 51. Been with him ever since?

A. Yes, sir.

X Int. 52. Selling his tobacco?

A. Yes.

X Int. 53. Do you handle any other tobacco except his?

A. None but his.

X Int. 54. And have not since you have been with him?

A. No, sir.

Signature waived.

LEVI E. TAYLOR, being produced, sworn, and examined as a witness on the part of the complainants, testified as follows:

Direct examination by Mr. HATCH:

Int. 1. Were you ever a member of the firm of Norris, Taylor & Co. of this city?

A. Yes, sir.

Int. 2. During what time was that firm engaged in business here?

A. From 1861 to some time in 1873.

Int. 3. What was its business?

A. Wholesale grocers.

Int. 4. A large house, was it not?

A. Yes, sir.

Int. 5. Do you know whether, or not, that firm, while engaged in the grocery business, ever handled any tobacco made by Boyce Brothers, in this city?

A. Yes; we handled considerable made by Boyce.

Int. 6. Did you see that tobacco?

A. I did, sir.

Int. 7. Do you remember whether any of that tobacco had marked upon the side of the plug the word "Blackberry"?

113 A. I do not, sir.

Int. 8. Did you ever see any tobacco with that mark upon it?

A. Well, I can't say that I saw the word "Blackberry" on the tobacco, as I told you in the other room. Mr. Boyce was in there last year, or the year before—I can't name the time precisely—and brought in a plug of tobacco with some indentation in it—whether it was "Blackberry," or something else, I can't say—and asked me if I didn't remember handling that tobacco, manufactured by him while we were in the grocery business, and I told him I could not; and he left the plug at my office so as to refresh my recollection, but I never was able to remember that we had used that brand. I didn't see that it had the word "Blackberry" on it; I only saw it had an indentation, some letters indented, that I don't remember.

Int. 9. Do you remember what has become of Mr. Collier, of the firm of Center, Collier & Rankin?

A. Well, Mr. Collier is reported dead.

Int. 10. How about Samuel McCartney, of the firm of McCartney & Co?

A. He is deceased for some years.

Cross-examination by Mr. BOYCE:

X Int. 1. About when was it this plug of tobacco was brought into your office by Mr. Boyce?

A. It was either last year or the year before; I can't remember the time exactly, because it was not impressed on my mind.

X Int. 2. How long did it remain in your office?

A. Well, it remained there for some time; until, probably, two or three months; at least a month, anyhow.

X Int. 3. Where was it in your office? Where did you keep it?

A. Oh, it was lying upon the desk in a public place.

X Int. 4. What became of it finally?

A. It was given to somebody that was a chewer and wanted it.

114 X Int. 5. How often did you see that plug?

A. Well, I suppose I saw it twenty times a day, perhaps, for some days.

X Int. 6. Will you say that no tobacco was sold to you by Boyce Brothers having a mark upon it?

A. No, sir; I will not.

X Int. 7. Did you make such examination of the tobacco that you bought of Boyce Brothers that would enable you to say whether any plugs had marks or indentations of any kind on it?

A. No, sir; my observation was only casual. We may have bought tobacco by brand; so many years ago I can't say as to that.

X Int. 8. You won't say you did not buy?

A. No; I only say now I don't recollect tobacco of that description.

X Int. 9. You may have bought tobacco from Boyce, buying it by the brand "Blackberry," may you not?

A. We might; yes, sir.

X Int. 10. There was no particular reason why you should remember the matter?

A. None in the world, sir. Tobaccos were sold expressly by brands when I was in the business.

X Int. 11. How largely did you deal in tobacco, Mr. Taylor?

A. Well, I can't tell that, sir; it was considered a pretty profitable part of the business; sold all we could of it.

X Int. 12. Did you deal in the manufacture of many parties?

A. Well, we gave—Mr. Boyce used to be a clerk with us, and we gave him the preference after he went into the business and bought all I could of him, but frequently we had to buy brands of other parties when ordered to buy different brands.

X Int. 13. Did his tobacco sell readily?

A. Yes, sir.

X Int. 14. Find any complaint about it?

A. I remember nothing special, sir, in that line.

115 Re-examination by Mr. Hayden:

Int. 11. What kind of tobacco was it you bought of him principally, what style of tobacco, dark or light?

A. We bought various kinds, bought all the styles he kept, that we could sell.

Int. 12. When you say you bought tobacco by brand, please state what you mean by brand.

A. We asked, for instance, for Blackberry brand; that might have become very popular with country merchants, they would simply say: "Send me a caddy of Blackberry tobacco."

Int. 13. Where was the brand usually put in the tobacco?

A. Branded on the outside, in the shape of a label or brand, with a stencil.

Signature waived.

At this point, by consent of parties, the further taking of testimony in this case was adjourned until to-morrow, at 2 o'clock p. m., January 21, 1879.

L. L. WALBRIDGE,
Special Examiner.

ST. LOUIS, *January 22d*, 1879.

Parties met pursuant to adjournment, and the further taking of testimony in this case was resumed, as follows:

WILLIAM REGAN, being produced, sworn, and examined as a witness on the part of the complainants, deposes as follows:

Direct examination by Mr. HAYCH:

Int. 1. What is your business?

A. I am a laborer, sir.

Int. 2. Have you ever been engaged as a tobacconist?

A. Yes, sir.

116 Int. 3. For how long have you worked in that capacity?

A. I started, I believe, in 1857 or 1858, in the business; I think it was in 1858.

Int. 4. How much time since then have you worked in that business?

A. Off and on pretty much every year, except a couple of years I never worked at it at all.

Int. 5. In what capacity did you work?

A. In the press-room, sir.

Int. 6. Have [you] ever worked for Miller & Worley, of St. Louis?

A. Yes, sir.

Int. 7. When did you begin with them?

A. When they started into business, sir, for themselves.

Int. 8. In what capacity were you working for them?

A. In the press-room.

Int. 9. Are you working for them now?

A. No, sir.

Int. 10. What is your present occupation?

A. I work at Hamilton & Sharp's pork house.

Int. 11. While working for Miller & Worley in the press-room along about 1876, do you remember Mr. Meyers' coming there to see some work that was being done?

A. Yes, sir.

Int. 12. Who was he with?

A. Well, I can't tell you; he was with Mr. Worley.

Int. 13. How did you come to see them?

A. Well, I was working in the press-room, and Mr. Worley told me to open a box of tobacco to let the gentlemen see, though I didn't know Mr. Myers at that time.

Int. 13½. How did you find out who he was?

A. I asked after who he was.

Int. 14. After you opened the box of tobacco for them?

A. Yes, sir.

Int. 15. Did they inspect it?

A. Yes, sir.

Int. 16. Did you hear what conversation passed between Mr. Worley and Mr. Myers at that time?

117 A. I heard all the conversation that passed when I was there, when they were in the press-room. I saw that Mr. Meyers had a plug of tobacco, took a plug in his hand and looked at it, and said "it was the finest he ever saw"—that it was put up good.

Int. 17. Did you ever hear Mr. Worley say to Mr. Meyers he could press his name, or trade mark, or anything in it he wanted, by putting it under his press; that it would stay firmly and not come out; that green tobacco would not hold that impression; that it would swell out; that Boyce Brothers had tried it with green tobacco, and that it would not stay in, but under his press it would stay in, or any conversation of that nature?

(Objected to, as leading and directly stating the answer sought from the witness.)

A. No, sir; I never heard anything of the kind.

Int. 18. Was anything said between Mr. Miller and Mr. Meyers at that time in regard to Boyce Brothers?

(Same objection as before.)

A. No, sir.

Int. 19. State the whole conversation, as near as you can, that took place at that time between those two persons.

A. That is all the remarks I heard, or saw them after making.

Int. 20. What you stated before?

A. What I stated before. He took a plug in his hands and he said that "it was the finest he ever saw;" that it was put up in good style.

Int. 21. If anything had been said in regard to Boyce Brothers, were you so situated you would have heard the remark?

A. I was standing along side of them so I could hear everything that passed.

Int. 22. How long did this conversation last?

A. Didn't last not long, sir, this talking. They didn't stay long in the press-room.

Int. 23. Did you know the firm of Boyce Brothers, formerly in the tobacco business in this city?

A. Yes, sir.

Int. 24. State whether you ever worked for them.

A. Yes, I worked for them, sir.

118 Int. 25. About what time?

A. The fall of 1874.

Int. 26. What did you do there?

A. I worked in the press-room, sir.

Int. 27. What was your work in the press-room?

A. Handling molds and packing tobacco.

Int. 28. Did you notice there at that time any molds like the set marked "Exhibit Blackberry Molds" shown you in the other room?

A. No, sir. I never saw the like.

Int. 29. State whether, while you were working there, you saw any tobacco marked in any particular way made there at that time?

A. I haven't seen no tobacco marked.

Int. 30. Did you see any tobacco there at any time marked with the word "Blackberry" pressed into the face of the plug?

A. No, sir.

(Objected to, as leading.)

Int. 31. You saw the molds that were in use there?

A. Yes, all the molds in use. I handled them.

Int. 32. If there was a mold in use there with the word "Blackberry" in the metal plate upon the face of one of the blocks, do you think you would have seen it?

A. I couldn't help seeing it, it is remarkable; anybody could see that, sure; a tobacco man that worked as long in the business as I did, that is a thing I would take notice of.

Int. 33. And you say you never saw anything of the kind?

A. No, sir; I didn't.

Int. 34. What kind of tobacco was it that Boyce Brothers were putting up at that time?

A. Pretty much mahogany, sir.

Int. 35. What style of tobacco was that, sweet or otherwise?

A. It is between a dark and a bright.

Int. 36. How about the sweetness, or dampness, or dryness of the tobacco?

A. Well, it was pretty sweet, sir.

Int. 37. How about the dampness or dryness?

A. It was pretty sweet, and kind of mushy like—kind of soft.

119 Int. 38. That tobacco as it was at that time, what would be the effect of taking it out of the molds, and letting it lie without packing it up in caddies?

A. If it stood five minute it would swell up so you couldn't put nothing of it into a caddy, hardly; couldn't put much in a box, it would swell up that big; had to be packed fast as it came out of the molds.

Cross-examination by S. S. Boyce, Esq.:

X Int. 1. What was the reason it would swell up so quick?

A. Well, it had no sweating, sir.

X Int. 2. What do you mean by sweating?

A. Well, tobacco that is put up that way, of course, if it stood in the air it is bound to swell.

X Int. 3. Any tobacco left out in the air is bound to swell up?

A. No, sir; not all don't.

X Int. 4. After that tobacco was put in a caddy, was it in good condition?

A. Well, no, sir; it was not in good condition.

X Int. 5. Then he didn't make any good tobacco at all, did he?

A. Well, it is pretty bad tobacco he put up there.

X Int. 6. You wouldn't consider the tobacco Boyce made there was good merchantable tobacco, would you?

A. No, sir; I don't.

X Int. 7. You don't believe it is known in the trade, among customers, as good merchantable tobacco?

A. No, sir; I don't believe it is good merchantable tobacco.

X Int. 8. You are certain of that?

A. Yes, sir.

X Int. 9. No doubt about that?

A. No, sir; no doubt about that.

X Int. 10. How long were you with Boyce?

A. I was with Boyce—I worked with him about a week.

120 X int. 11. Oh, you did! when did you go away, or leave?

A. I have no day or date when I left, or the day when I went to work for him; I haven't the day or date.

X Int. 12. What month was it?

A. I can't tell that, sir.

X Int. 13. What season of the year?

A. In the fall of the year.

X Int. 14. In the fall of 1874?

A. Yes, sir.

X Int. 15. What part of the fall?

A. Well, it is the commencement of the fall, sir.

X Int. 16. What part of the week did you commence to work in?

A. Monday morning.

X Int. 17. He discharged you Saturday night, did he?

A. No, sir.

X Int. 18. When did he discharge you?

A. When I went down Monday morning, following Monday, he told me he couldn't afford to pay me the wages, and I told him I couldn't afford to work for him.

X Int. 19. How much tobacco did you make the week you were there?

A. That is more than I can tell.

X Int. 20. Much or little?

A. I can't tell how much tobacco we put up.

X Int. 21. Was he not making a large amount of tobacco?

A. No, sir, he was not.

X Int. 22. How many different molds was he running?

A. I guess about six sets. We had six sets, not all running, I believe.

X Int. 23. How many in a set?

A. Twelve frames.

X Int. 24. Was he running all the frames while you were there?

A. Yes, sir.

X Int. 25. He run the whole six sets that week?

A. Yes, sir; just put through one set and then put in other tobacco, and put another set in to suit that.

121 X Int. 26. How many turns did it take for those sets?

A. Suppose we put in to-day and worked that set out——

X Int. 27. I am not supposing. I ask, as a matter of fact, how many sets run a day while you were there?

A. Well, six sets.

X Int. 28. You swear he run six sets every day, while you were there?

A. Yes, sir.

X Int. 29. How many turns on a set a day?

A. Well, I can't exactly tell that.

X Int. 30. Have you any idea how many?

A. Well, maybe might take them out twice a day.

X Int. 31. Who was employed there besides you at that time?

A. Well, I don't know the men.

X Int. 32. Can't you give the names of anybody?

A. No, sir; I can't tell a man in it.

X Int. 33. There were some other men there, were there not?

A. Oh, yes! I don't know who they were, though.

X Int. 34. Were you in his factory before that?

A. Yes, sir.

X Int. 35. How many times?

A. O, I was in pretty often.

X Int. 36. Did you go back there afterwards?

A. No, sir.

X Int. 37. When you left him where did you go?

A. Well, I went to work in the upper part of town, then worked in a pork house.

X Int. 38. For whom?

A. I worked for Maqueen.

X Int. 39. Immediately after leaving Boyce did you go to Maqueen?

A. Well, I can't exactly say whether I went right away or not, but I went to work there in the winter time.

X Int. 40. How soon, after leaving Boyce's, did you go there?

A. Well, maybe it was about three weeks or a month after.

122 X Int. 41. Whom were you employed by before you went to Boyce's?

A. I was employed by Mr. Peper.

X Int. 42. How long, after leaving him, did you go to Boyce's?

A. Well, the day I left Peper's.

X Int. 43. What were you doing at Peper's?

A. Foreman in the press-room.

X Int. 44. When did you next begin to manufacture tobacco after you left Boyce's?

A. I went, then, after leaving Boyce, the first place I went to manufacture tobacco, I went to Miller & Worley's.

X Int. 45. That was in 1876?

A. Yes, sir.

X Int. 46. Have you ever seen Mr. Meyers more than once?

A. No, sir; not to my knowledge.

X Int. 47. You never saw him but once?

A. No, sir; I wouldn't know the man if I saw him now.

X Int. 48. You say they were not in the press-room a great while; where did they go to out of the press-room?

A. In the office, I expect.

X Int. 49. You didn't go to the office with them?

A. No, sir.

X Int. 50. Mr. Worley and Mr. Meyers went out alone?

A. I can't say where they went to, but they left the press room.

X Int. 51. You did not ever hear any conversation, except what occurred in the press-room?

A. Not a word.

X Int. 52. How long were they there?

A. They were not there long.

X Int. 53. Well, how long?

A. Maybe about ten minutes; that is, as long as they was in it.

X Int. 54. Did you know it was Mr. Meyers you saw there?

A. I didn't know then, sir.

X Int. 55. Do you know now?

A. No, sir; I wouldn't know Mr. Meyers if I saw him now, either.

123 X Int. 56. You know you did see Mr. Myers at that place.

A. Yes; I made inquiries who the gentleman was.

X Int. 57. Who did you inquire of?

A. Of Mr. Worley.

X Int. 58. When?

A. When he came back to the press-room.

X Int. 59. How long afterwards?

A. About half an hour, maybe, something like that to the best of my knowledge.

X Int. 60. You remember everything that was said while they were in the press-room?

A. That is all the words I heard spoke; all while they were with me is when I opened the tobacco; he looked at it, took a plug in his hand, and said: "That is put up in good style; it was finished well."

X Int. 61. You heard everything said there, did you?

A. Yes, sir.

X Int. 62. You remember every word said by either party while they were in the press-room there?

A. Yes, sir.

X Int. 63. When, since that day, has your attention been called to that conversation?

A. I can't tell you what time it was; I don't know what day it was.

X Int. 64. Who spoke to you about that conversation since the day it occurred?

A. Nobody spoke to me about it.

X Int. 65. Has the conversation ever been mentioned to you?

A. No, sir.

X Int. 66. Nobody ever talked to you about what conversation took place there?

A. No, sir.

X Int. 67. Then until you were questioned here as to that conversation, the matter had never been mentioned to you before?

A. No, sir.

124 X Int. 68. You say, until you were asked to-day here by the gentleman in the examination, in regard to this conversation, nobody had ever asked you about it?

A. Nobody.

X Int. 69. You understand what I say, do you?

A. I understand very well, sir.

X Int. 70. What? until Mr. Hatch asked you the question a moment ago, nobody ever spoke to you about this conversation with Mr. Meyers?

A. Nobody spoke to me about it.

X Int. 71. How long did you work with Miller & Worley?

A. Since they commenced business.

X Int. 72. Until when?

A. Until last year.

X Int. 73. What time last year?

A. I can't tell you what time I quit. I didn't take down the date.

X Int. 74. What month?

A. I can't tell that, either.

X Int. 75. What season of the year—spring, summer, fall, or winter?

A. In the fall of the year.

X Int. 76. After leaving them, you went to the pork business again?

A. Yes, sir.

X Int. 77. Still there?

A. Still there.

Re-examination by Mr. Hatch:

Int. 39. When you say no one ever spoke to you about the conversation that took place in the tobacco factory there, what do you mean? Do you mean to say that no one ever asked you whether you remembered that conversation? Have you not been asked whether you remembered what conversation took place?

(Objected to, as leading, and directly suggesting to the witness the answer sought.)

A. I don't understand what you mean.

125 Int. 40. In your cross-examination you have been asked in regard to whether any one had spoken to you about the conversation that took place.

A. Nobody spoke to me until to-day about it.

Int. 41. Who spoke to you to-day about it?

A. You spoke to me to-day about it—now.

Int. 42. When was that; just state when I spoke to you about it?

A. Just right here in this room.

Int. 43. Before you went on the stand?

(Objected to, as leading.)

A. Yes, sir.

Int. 44. State whether you were not asked, before coming up here, about whether you remembered the conversation?

(Objected to, as leading; and further, for the reason the witness has already testified distinctly he understands the questions propounded to him, and he stated distinctly he never was spoken to in regard to the matter.)

(Counsel for complainants insists the witness has the right to explain his answer, as he evidently misunderstood the question, the questions of counsel for defendants being put as rapidly as they were.)

(Question repeated.)

A. Before ever I came up in here?

Int. 43. Yes, sir; down at the works.

A. Oh, yes sir; I was asked that question.

Int. 46. What did you answer to it when you were asked that question?

A. I answered that I remembered the words what had passed in the press-room.

Recross-examination by Mr. Boyd:

R. X Int. 78. When you stated to me, in answer to my question, that you understood distinctly what I meant, and that you had never spoken to anybody in regard to the matter prior to being questioned by Mr. Hatch——

A. No, sir; I never did.

R. X Int. 79. What did you mean by that?

A. I mean that it was never asked of me until to-day; that is what I meant by it.

126 R. X Int. 80. Then you were questioned about this matter before you came to this room, were you?

A. Sir?

R. X Int. 81. Then you were questioned about this whole matter before you came to this room?

A. I was asked did I remember the words that passed in the press-room.

R. X Int. 82. Well?

A. And I said I remembered the words of the gentleman that came in there, when I was told it was Mr. Meyers.

R. X Int. 83. Is that all you were asked, whether you remembered the words that passed in the press-room?

A. That is all the words.

R. X Int. 84. Did they tell you what the words were?

A. They asked me did I remember the words passed in the press-room between Mr. Miller and Mr. Worley, or between Mr. Worley and Mr. Meyers?

R. X Int. 85. Well?

A. And I said yes.

R. X Int. 86. Didn't they state to you what words they referred to?

A. They stated to me, was them words passed in the press-room?

R. X Int. 87. Did they take a book and read to you the words, and ask you if you heard those words?

A. Yes, sir.

R. X Int. 88. Who did that?

A. This gentleman, Mr. Hatch.

R. X Int. 89. Where?

A. Right here.

R. X Int. 89. Before he read that to you right in here, had anybody else spoken to you about it?

A. No, sir.

R. X Int. 90. Then nobody ever spoke to you about this conversation?

A. No, sir, not until Mr. Hatch.

127 R. X Int. 91. Until you came to this room?

A. No, sir.

R. X Int. 92. There was no conversation between you and anybody else in regard to this conversation between Mr. Meyers and Mr. Worley until you came here to this room?

A. No, sir.

(Counsel for the complainants objects to the peculiar treatening manner in which counsel puts his questions, intending to disconcert the witness.)

R. X Int. 92½. You understand what I say, do you?

A. Yes, I guess I do.

R. X Int. 93. That prior to coming to this room nobody had spoken to you about this matter?

A. No, sir.

R. X Int. 94. And it is true nobody had spoken to you until you came to this room about it?

A. No, sir; nobody had spoken to me.

R. X Int. 95. Who brought you to this room?

A. Mr. Hatch; I was down on the street.

R. X Int. 96. Down street where?

A. Down here on Washington avenue.

R. X Int. 97. How came you there?

A. I was told to be up here.

R. X Int. 98. By whom?

A. By Mr. Worley; sent up for me.

R. X Int. 99. Who did he send?

A. Sent a messenger for me.

R. X Int. 100. Who?

A. I don't know the fellow; I don't know who it was; he sent him up to my house last night to be down here.

R. X Int. 101. Do you know who it was he sent?

A. No, sir, I don't; I never seen nobody. It was my boy was telling me this morning

R. X Int. 102. You didn't see Mr. Worley before he sent for you?
A. No, sir.
128 R. X Int. 103. You have never seen Mr. Worley in regard to this matter?
A. No, sir; I did not.
R. X Int. 104. The first you knew of this matter was a messenger came to your house and told you to come to Washington avenue to-day?
A. Told me to come down to the office; I went down to the office this morning, I guess about 9 o'clock, and they told me they wanted me up here to-day.
R. X Int. 105. Who told you?
A. Mr. Worley.
R. X Int. 106. Whereabouts did you see Mr. Worley?
A. I saw him down at his office.
R. X Int. 107. What time this morning?
A. About nine o'clock.
R. X Int. 108. How long were you there?
A. Well, I was up and down stairs pretty much until noon time.
R. X Int. 109. You were down there with Mr. Worley all the forenoon?
A. No, sir; I was up and down stairs, up stairs pretty much all forenoon.
R. X Int. 110. Where was Mr. Worley?
A. I can't tell where he was.
R. X Int. 111. Was he out at the factory?
A. I can't say.
R. X Int. 112. Didn't you see him at all?
A. I saw him in the morning.
R. X Int. 113. Didn't you see him after the morning?
A. No, sir; until I saw him right here.
R. X Int. 114. How long were you in the office with him?
A. Not long, sir.
R. X Int. 115. How long?
A. About a couple of minutes.
R. X Int. 116. What did he say to you?
A. Nothing.
129 R. X Int. 117. What did you say to him?
A. Nothing at all; he told me to be up here with Mr. Hatch.
R. X Int. 118. Nothing more was said?
A. That was all, sir.
R. X Int. 119. Was Mr. Miller there?
A. Mr. Miller was there, sir.
R. X Int. 120. Did you talk to him?
A. No, sir; I just bade him good morning, or so.
R. X Int. 121. He didn't speak to you, nor you to him, except to bid him good morning?
A. That is all.
R. X Int. 122. How long was Mr. Miller there this morning?
A. I can't tell how long he was there.

R. X Int. 123. Did you see him after he went out of the office?

A. I saw him coming down stairs, going off to dinner; I was up stairs; the boy was working there.

R. X Int. 124. You didn't see him between those times; when you first went to the office and when you saw him going away to dinner?

A. No, sir.

Re-examination by Mr. Hatch.

Int. 47. When you were at the office of Miller & Worley this morning, who was conducting the conversation that took place there?

A. You did, sir.

Int. 48. Did Mr. Worley or Mr. Miller speak to you at all about this matter?

A. No, sir.

Int. 49. In that conversation I conducted with you, please state just what I asked you.

A. All that is asked——

(Objected to, for the reason that the witness has already stated no conversation occurred with Mr. Hatch except in this room.

Counsel for complainants objects to the statements of counsel, for the reason that the witness has already stated that he did have a conversation of that kind at the time, and it was only under the threatening manner of the cross-examination, conducted by counsel for defendants, that the witness stated anything else.)

Int. 50. State the conversation that took place with me at the office of Miller & Worley this morning?

A. Well, I have nothing to state about it; I can't say nothing about that, only just what you told me.

Int. 51. State what I asked you there.

A. About that book, you asked me, "Did I hear any conversation that happened?" That is all I ever heard.

Int. 52. And what did you state?

A. I stated I heard no conversation in my life that happened in the press-room, only the words I am after repeating.

Int. 53. The words you repeated before?

A. The words I am repeating now.

Int. 54. You stated them substantially as you stated them in your examination?

A. Yes, sir.

Int. 55. After that that conversation was renewed in the room here before putting you on the stand?

(Same objection, as leading and suggesting to the witness.)

A. Yes, sir.

Cross-examination by Mr. Boyd:

X Int. 125. Mr. Hatch seems to think you have been badly frightened here?

A. I am not a bit frightened here, sir: I never was easy frightened yet.

X Int. 126. Has anything I have said frightened you?

A. None in the world: beggar, you could not frighten me.

X Int. 127. Any answer you have made has not been made because I frightened you to make it, has it?

A. No, not a bit.

131 X Int. 128. Any answer you made was made because you believed it to be true, and not because I frightened you?

A. No; you didn't frighten me, and you couldn't frighten me.

X Int. 129. Did you see anything threatening in my manner that made you answer untruly?

A. No, not a bit; none, as I know of.

Signature waived.

J. A. HEITKAMP, being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. HAYDEN:

Int. 1. What is your business?

A. I am clerking for Kratt, Holmes & Co., of this city, grocers.

Int. 2. State whether you were ever engaged in the grocery business yourself; if so, with what firm.

A. I was with Spaunhorst & Hackman for seven years clerking, and seven years as partner.

Int. 3. During what time?

A. From 1862, about fourteen years, to 1876, I think it was.

Int. 4. What was the business of the firm of Spaunhorst & Hackman?

A. Wholesale grocers.

Int. 5. Handling tobacco?

A. Yes, sir.

Int. 6. To some considerable extent.

A. Well, a good deal of tobacco, yes.

Int. 7. From what parties did they buy, generally?

A. Buy from anybody.

Int. 8. Where did they do business?

A. On Main street for awhile, and for awhile on Second, while I was with them.

132 Int. 9. In this city?

A. Yes, sir.

Int. 10. Did the firm purchase tobacco from Boyce Brothers?

A. Yes, sir.

Int. 11. To what extent?

A. I don't know how much we bought; I can't tell unless I saw the books; we bought as we used it, and bought from others as we needed it.

Int. 12. Were you acquainted with Mr. Boyce at that time?

A. I know Jo Boyce; yes, sir.

Int. 13. Well?

A. I know him very well.

Int. 14. Did you ever see tobacco bought by that firm from Boyce Brothers?

A. Yes, sir.

Int. 15. State whether you ever saw any of that tobacco purchased of Boyce Brothers that had the word "Blackberry" stamped on the face of the plug.

A. On the face of the plug, you mean?

Int. 16. Yes, sir.

A. No, sir; I never saw it.

Int. 17. Did you ever see Boyce Brothers' tobacco in other places than at your own place of business?

A. I have seen them in their factory—in their office.

Int. 18. Did you ever see any tobacco in their factory, in their office, with the word "Blackberry" stamped on the face of the plug?

A. I never saw such a plug in my life.

Int. 19. Did you ever hear of such a plug marked in that manner?

A. I never did.

Int. 20. Were your relations with Boyce such that if he was engaged in putting up a new thing you would be likely to know what he was doing?

A. Yes; that is, if it was in the tobacco business; I think so.

133 Cross-examination by S. S. Boyd, Esq.:

X Int. 1. During what years did you buy of Boyce Brothers?

A. The house I was with bought from Boyce Brothers; I don't know what years, but they did buy from Boyce Brothers, I think, four or five years just before I quit there.

X Int. 2. When did you quit?

A. 1876; I think fourteen years after; I quit in 1876.

X Int. 3. Then they bought from 1875 down?

A. I don't remember, unless I go back and get the old books. I can't tell then exactly.

X Int. 4. You say about four or five years before that?

A. It may have been, and it may have been Roach, Boyce & McCabe before, for all I know; I think that was the name of the firm before that.

X Int. 5. How much did you buy of him?

A. I can't tell.

X Int. 6. I don't mean exactly; but large or small quantity?

A. I don't think a very large quantity.

X Int. 7. Did you buy regularly from year to year?

A. I don't know how long we bought it; bought when we needed their goods.

X Int. 8. Did you continue to buy from time to time, after you once commenced?

A. Yes, sir.

X Int. 9. Did you buy more of theirs than of other manufacturers, or less?

A. I don't know; I can't tell that; I think we did—though not sure.

X Int. 10. Did you find any complaint of their tobacco?
A. Yes, sir.
X Int. 11. On what account?
A. It was not sound.
X Int. 12. All of it?
A. No, sir.
X Int. 13. Now, did you examine all the tobacco that your firm, the firm with which you were connected, bought of Boyce Brothers?
A. No, sir.
134 X Int. 14. What examination did you give to that you did examine?
A. Chewed it and looked at it; that is all I could give to it.
X Int. 15. Did you ever examine all the plugs in any caddy?
A. No, sir.
X Int. 16. Did you ever open a caddy for the purpose of examining a plug?
A. Yes, sir.
X Int. 17. When you opened them, how many plugs did you take from the caddy?
A. Sometimes took two, sometimes opened it in the middle and took out two or one.
X Int. 18. But you never separated the plugs entirely from each other?
A. No, sir; if I could help it I would not.
X Int. 19. Did you ever, at any time, see all of the plugs separately that went into any caddy of his tobacco?
A. No, sir.
Signature waived.

MAX FRITZ, being produced, sworn, and examined as a witness on the part of complainants, testified as follows:

Direct examination by Mr. HATCH:

Int. 1. With what firm are you employed?
A. With the Catlin Tobacco Company, of St. Louis.
Int. 2. In what capacity?
A. Soliciting.
Int. 3. What is the business of that company?
A. Manufacturing of the best fine chewing and smoking tobacco.
Int. 4. You are soliciting orders?
A. Yes, sir.
137 Int. 5. How long have you been engaged in that capacity?
A. Between seven and eight years.
Int. 6. During that time have you been familiar with the tobacco trade on the streets of St. Louis?
A. I have been more or less.
Int. 7. It is your business to be around among the trade, to see the kind of goods parties are using, to soliciting orders?
A. Yes, sir; that is my business.

Int. 8. Have you seen the tobaccos put upon the market by various parties?

A. I have seen tobacco put on the market by many of them; I didn't pay any particular attention to them, as I told you; I would now and then strike parties' names, and find out whose they were; it was not my regular business to keep track of plug tobacco altogether, but if anything new came out that struck my attention same as anything else, more so in tobacco.

Int. 9. During the time you were familiar with the trade in St. Louis have you ever seen any tobacco with the word "Blackberry" stamped on the side of the plug?

A. No, sir; I have not.

Int. 10. Have you ever heard of any such tobacco?

A. I haven't heard of it; no, sir.

Int. 11. What is the first tobacco you have seen marked with an impression?

A. The first tobacco I have seen with indented lines, or impressions of any kind, was manufactured by Miller & Worley.

Cross-examination by Mr. Boyd.

X Int. 1. Catlin & Co. deal exclusively in fine-cut tobacco?

A. Chewing and smoking tobacco.

X Int. 2. Fine cut?

A. Yes, sir.

X Int. 3. Do they deal in plug tobacco at all?

A. No, sir.

X Int. 4. Do you sell or solicit sales for plug tobacco?

A. No.

138 X Int. 5. Have you anything to do do whatever with plug tobacco in your business?

A. No, sir; not at all; only just as far as curiosity is concerned; in going round I would see plug tobacco samples, smoking samples usually, kept in one department in sample room; in looking round I would see them.

X Int. 6. How were the samples arranged in the caddy or out?

A. Some were different; some have sample cases of plug tobacco same as smoking tobacco; some in drawers loose; others again have them in caddies, set on shelves or otherwise.

Signature waived.

Edwin M. Elam, being produced, sworn, and examined as a witness on the part of the complainants, deposes and says:

Direct examination by Mr. Hatch:

Int. 1. What is your occupation?

A. I am a manufacturer of tobacco.

Int. 2. With what firm?

A. At present with Leggett & Butler, in St. Louis.

Int. 3. State whether or not you were ever in partnership with Mr. C. S. Fisher.

A. Yes, sir.

Int. 4. For how long a time?

A. I think about three years.

Int. 5. What was the firm name?

A. Fisher & Elam.

Int. 6. About what time did that firm commence operation?

A. My recollection is about the first of May, 1870.

Int. 7. What was their business?

A. Plug manufacturers, manufacturing plug tobacco.

Int. 8. During the time that firm was in business, did they mark any of their tobacco with the work "Blackberry" impressed into the face of the plug?

A. No, sir.

139 Int. 9. State whether or not they marked any tobacco with any name impressed into the body of the tobacco itself, that is, by impressing or by stamping the plug with letters, like the word "Blackberry," for instance?

A. Not in that way: no, sir.

Int. 10. State whether or not, while you were in business with Mr. Fisher, you remember of any conversation with Mr. Fisher about stamping the word "Blackberry" into the tobacco?

A. No, sir: I have no recollection of any conversation in regard to that matter.

Int. 11. State whether or not, during that partnership, you remember of Mr. Fisher experimenting upon any other method of making tobacco: if so, how?

A. Well, we were experimenting. We had the firm name printed on a slip of thin pasteboard, paper I think of some kind of thin paper, then lay it on the plug and impress it in that way with the name on the paper. We have done that way.

Int. 12. How did that succeed?

A. In what respect, sir?

Int. 13. In the tobacco you were using there, what was the result of the trial of it?

A. Well, it was not very satisfactory, sir, at the time.

Int. 14. Explain why, if you please.

A. Well, we were at that time hand-casing very heavily, making very sweet piece tobacco, hand-cased, and we couldn't get the sweetening to remain in the plug: sometimes it would come out and would deface the strip.

Int. 15. Did the strip always stick to the plug, where it was impressed on?

A. Well, it would stick to one side or the other, sir; and so we took the precaution to have the name put on both sides.

Int. 16. As I understand in this trial that you made, the name of the firm was printed on a slip of paper?

A. Yes, sir.

Int. 17. And then you endeavored to impress that upon the tobacco?

A. Yes, sir.

140 Cross-examination by S. S. Boyd, Esq.:

X Int. 1. To what extent did you do that?

A. I can't say just now, as to what extent: I don't think we done a great deal of it. It was tried various and different times, though what amount was put up in that way I can't state.

X Int. 2. Did it remain upon the plug sufficiently well to enable you to put it on the market with the mark upon it?

A. Well, we left it upon the plug, sir, what we put it on: I don't think we put a great deal out that way, and I don't think we ever put on a great many strips at a time; we were buying it from time to time. We tried it in the finisher after the plug was pressed, and put it in the molds on the blocks before it was pressed: tried both ways, I think.

X Int. 3. With strips of pasteboard?

A. Yes: light pasteboard, I think, or a slip of paper of some kind.

X Int. 4. You said the strip of paper would stick to either one of the plugs or the other?

A. Yes, sir.

X Int. 5. Would there be any impression left on the plug that didn't stick in?

A. There would, sir; for the time being, I don't know how long, it would remain impressed. Of course, wherever the paper is pressed in.

X Int. 6. That is, the face of the plug which stuck to the paper would be on, and on the face of the other plug there would be an impression made by the pasteboard.

A. A slight impression; yes, sir.

X Int. 7. Would the tobacco go out on the market in that condition?

A. Well, we sent out very little that way, but to what extent it was, now I can't recall very distinctly.

Signature waived.

141 J. C. Kratt, being produced, sworn, and examined as a witness on the part of the plaintiffs, testified as follows:

Direct examination by Mr. Hatch:

Int. 1. What business are you engaged in?

A. Wholesale grocery.

Int. 2. What firm?

A. Kratt, Holmes & Co., of this city.

Int. 3. It is a large wholesale grocery house?

A. Yes, sir.

Int. 4. One of the largest in the city?

A. I guess so.

Int. 5. Has the firm been accustomed to handle tobaccos?

A. Yes, sir.

Int. 6. Various brands?

A. Yes.

Int. 7. Different styles and manufactures?

A. Yes.

Int. 8. Do you remember whether the firm, since you have been in the business, has handled any tobacco made by Boyce Brothers?

A. Yes, sir; we have handled one lot, if I recollect.

Int. 9. Have you been accustomed to see various brands of tobacco on this market?

A. Yes, sir.

Int. 10. How long have you been in the business?

A. I have been in the grocery business here some fourteen years.

Int. 11. State whether or not, since you have been in the business, you have ever seen plug tobacco with the word "Blackberry" stamped in the face of the plug.

A. No, sir; I have not.

Int. 12. Or heard of such tobacco?

A. Oh, no, sir; I have not.

142 Int. 13. State what the first tobacco was that you have seen on the market with an impression on the face of the plug, or with a trade mark, or letters, or names.

A. The only things I can recollect is Miller & Worley's goods, with an impression made in the plugs.

Cross-examination by Mr. BOYD:

X Int. 1. When was your firm formed?

A. The firm I am with now was formed about seven years ago.

X Int. 2. How large a lot was that of Boyce's tobacco you handled?

A. I think it was eight or ten butts.

X Int. 3. By butts you mean caddies do you?

A. No, I mean twenty or thirty pound butts.

X Int. 4. What sized tobacco in that plug?

A. It was checkerboard.

X Int. 5. I mean what size were the plugs?

A. I thing the plugs—I don't recollect, I think pound plugs; I have forgotten now, something like that; I think straight pound plugs.

X Int. 6. That is the only kind of tobacco of his you ever handled?

A. Yes that is the only thing I ever recollect handling.

X Int. 7. Did you ever examine his tobacco any other place?

A. I have not; no, sir.

Signature waived.

WILLIAM H. RYAN, being produced, sworn, and examined as a witness on the part of complainants, deposes and says:

Direct examination by Mr. HATCH:

Int. 1. What is your business?

A. Tobacco business—tobacco manufacturing.

143 Int. 2. What is the firm with which you are connected?

A. Ryan & Cummesky.

Int. 3. Where is that firm doing business?

A. 820 N. Fourth street, St. Louis.

Int. 4. You are the Ryan of that firm?

A. Yes, sir.

Int. 5. What style of business do they do—making plug tobacco?

A. Yes, sir; plug tobacco.

Int. 6. How long have they been engaged in that business?

A. I think since 1878.

Int. 7. During that time have you been familiar with the trade here in the city, seen tobaccos that has been put on the market?

A. Yes, sir; a good deal of it.

Int. 8. Have you ever seen any tobacco made by Boyce Brothers in this city?

A. Not to my recollection. I don't know that I ever took particular notice of a plug of this tobacco; I may have seen it; I don't remember it just at present.

Int. 9. Have you ever seen or sold in this city, or in any place in the city, tobacco marked with the word "Blackberry" impressed into the side of the plug?

A. No, sir.

Int. 10. Have you ever heard of such tobacco here prior to the raising of the present controversy?

A. I don't think I did.

Int. 11. What was the first tobacco that you ever seen an impression marked into the face of it to identify the maker?

A. Miller & Worley's, I think.

Int. 12. Your firm, I believe, are assisting in the defense of this case of Miller & Worley and others against Force and others, are you not?

A. Partly.

Int. 13. What other firms are assisting in that defense?

A. I don't know anything about it.

111 Int. 14. I will call your attention to a circular marked, "Address to Dealers in Tobacco," and signed by S. J. Force & Co., of Louisville; Weisinger & Bates, of Louisville; Liggett & Meyers Co., of St. Louis, Mo.; Schour & Norman, Covington, Ky.; Buchanan & Lyall, New York; E. Holbrook & Co., Louisville, Ky.; S. W. Venable & Co., Petersburg, Va.; Everson, Wilson & Co., Louisville, Ky.; Ryan & Cummesky, St. Louis, Mo.; Christian Peper, St. Louis, Mo.; The State of Ky. Tobacco Manufacturing Co., Chas. C. Mengal, Sr., president, Louisville, Ky.; Boyd & Co., St. Louis, Mo.

(Counsel for defendants objects to stating the contents of the circular, without putting the circular in evidence.)

Int. 15. I will ask you whether or not this firm marked at the bottom of the circular, Ryan & Cummesky, is your present firm?

A. I guess it is.

(Counsel for complainants here offers the circular in evidence and marks it "Exhibit Ryan Circular.")

Int. 16. These parties named in the circular are combined together, are they not, in the defense of this litigation?

A. I don't know that. I can't say that. I suppose they are, though.

Int. 17. They are contributing to the expense of the litigation, are they not?

A. I don't know that. I can't speak for anybody but myself on that circular.

Int. 18. Isn't it the understanding with which you went into this combination that the other parties in it should contribute, *pro rata*, to the expense of this defense?

A. Yes, sir.

Int. 19. How are you marking the tobacco that you now sell?

A. Marking it with a diagonal mark; that is, we are putting a diagonal mark on the plug.

Int. 20. How long have you been marking your tobacco so?

A. Pretty near a year.

Int. 21. Please state why you adopted that mark and commenced to put it on your tobacco.

(Objected to, as immaterial and irrelevant.)

A. Well, it was customary to have a mark of some kind.

145 Int. 22. How long has it been customary?

A. Since all of them got to using a mark, a great many of them.

Int. 23. Does it add to the salable quality of the goods in your opinion?

A. Well, it might.

Int. 24. Do you not think that it does?

A. Yes; I have no doubt but that it does.

Int. 25. It is a valuable privilege, is it not, to have the right of using a mark on your tobacco?

A. Well, I can't say that it was a valuable privilege. It is customary now for everybody to have something on their tobacco, whether it is a paper or a mark; I don't know but probably a paper might answer just as well as the mark I am using, but it is customary to have something on the plug.

Int. 26. Since when has this become customary—since what date?

A. The last year or year and a half.

Int. 27. The first mark of the kind you know of was not that mark of tobacco put out by Miller & Worley?

A. Yes, sir.

Cross-examination by Mr. Boyd.

N Int. 1. In what way does this add to the salable quality of tobacco?

A. Well, as I said before, it is customary now for manufacturers to have something on their tobacco. The trade appears to expect to see something on plug tobacco, whether a piece of paper or mark, or something of the kind.

N Int. 2. Does it affect the quality of the tobacco in any way?

A. Not a particle; no, sir.

N Int. 3. Had it any other effect than this? If the trade became

accustomed to buying tobacco with that particular mark, so that their customers got to calling for tobacco with that particular mark, that they will not buy their tobacco unless they can get it with that mark on it. Isn't that the only value in it?

146 A. That is about the only value, I think, there is.

X Int. 4. What value does putting a trade-mark on tobacco give to that tobacco more than putting a trade-mark on any other commodity would give to that commodity?

A. I don't know that it does, sir.

X Int. 5. The only value it has is the means of distinguishing tobacco of a particular manufacture?

A. That is all.

X Int. 6. Now, in regard to this circular to which your attention was called, have you contributed anything to the defense of this particular suit against Force?

A. I think we have.

X Int. 7. Have you agreed to contribute to the defense of this particular suit against Force?

A. No, sir; we have not.

X Int. 8. Do you expect to contribute anything to the defense of this suit hereafter?

A. That depends on circumstances.

X Int. 9. Have you agreed to do it?

A. I may have verbally; yes, sir.

X Int. 10. Do you consider yourself bound to contribute to the defense of the Force suit?

A. No, sir.

(Witness subsequently returns and states he desires to correct his testimony in the statement in reference to the Force suit, by stating "that we have not contributed anything at all to that suit, and have not agreed to.")

Re-examination by Mr. Hayden:

R. Int. 28. Have you not agreed to contribute, and have you not contributed, to a general fund for defense against the patent sued on in this case?

A. No, sir; I don't think we have.

R. Int. 29. Please state what the contribution that you contributed was for?

A. It was to defend any of the trade that those parties might bring suit against for handling our tobaccos.

147 R. Int. 30. State who you mean by those parties; do you mean the owners of the patent sued on in this case?

A. Yes, sir.

Signature waived.

By consent of parties the further taking of depositions in this case was continued until to-morrow at half-past one o'clock, January 22d.

Special Examiner.

JANUARY 22d, 1879.

Parties met pursuant to adjournment, and the counsel for the complainants announced that he had no further testimony at this time.

I certify that the foregoing is a true and faithful manuscript of the testimony of witnesses, taken by me, at times and places aforesaid.

L. L. WALBRIDGE,
Special Examiner.

118 *Testimony, taken March 24, 1879.*

Circuit Court of the United States for the District of Kentucky.
In Equity.

ANTON MILLER *et al. vs.* S. J. FORBE *et al.*

Examination of witnesses on behalf of the complainants, under the sixty-seventh rule in equity, as amended, before J. E. Twohig, who is hereby agreed upon as special examiner under said rule, at Cincinnati, this twenty-fourth day of March, 1879.

Present: John E. Hatch for the complainants and Samuel S. Boyd for defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

WILSON B. LOUGHRIDGE, a witness produced on behalf of the complainants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by JOHN E. HATCH, Esq., of counsel for the complainants, as follows:

Int. 1. State your name, age, residence, and occupation.

A. Wilson B. Loughridge; age, 39 years; residence, Louisville, Ky.; occupation, tobacco manufacturer.

Int. 2. How long have you been engaged in the business of tobacco manufacturing, and in what capacity?

119 A. I commenced from stemming when I was a boy, some thirty-five years ago, and have been engaged continuously since then in business, with the exception of two years, when I was in the leaf business. I have worked at the bench as a journeyman, been employed as foreman, manager, and carried on the business for myself.

Int. 3. Are you familiar with the methods of manufacturing plug tobacco in this country from '65 to '70, or thereabouts?

A. Yes, sir.

Int. 4. How are you at present employed?

A. With Finzer Bros., as foreman in the stemming department.

Int. 5. Have you seen the frame, one of the blocks of which has a brass plate upon its face, with the word "Blackberry" in raised letters, which is now present before you?

A. Yes, sir.

Int. 6. State whether or not you have made any experiment with

the said frame having the block, with the word "Blackberry" upon it, to test the question as to what sort of permanent impression would be made upon tobacco pressed in said frame, and by the plate with the word "Blackberry"? If so, state when you made such experiment, describe the manner in which the tobacco was made, and give the result of the experiment, and produce the tobacco thus manufactured if you can do so.

A. Yes, sir. I made two experiments; I made them first in the early part of January in this year, as the first experiment, and I made one since that. I made the second one last week; it was made by the old method in use some ten or twelve years ago: the tobacco was taken out of the hogshead, untied, and spread on the floor as thin and regular as you get it, and then have a bucket with a small broom with sweetening, and sprinkle it over the tobacco with the broom as evenly and regularly as you can. This is done in the evening, and it is not worked till the next day; then, the next day the stemmers take the stem out; then it goes to the twisters, and they make it by hand. It's made in the round plug; from there it goes to the press-room, and pressed in the molds before me, to which I am referred. After it is pressed in the molds it goes from there into the finisher, is then taken from the finisher and packed and pressed into the boxes.

Int. 7. Have you those boxes of tobacco here that were made by you from these molds in that manner, as heretofore described?

A. Yes, sir.

Int. 8. Please produce them and have them marked as exhibits to your deposition.

A. I here produce the two boxes so made, and the same are marked "Exhibits Loughridge Tobacco Experiment Nos. 1, A & B."

(Complainants' counsel offers the same in evidence.)

(Counsel also offers in evidence the frame and molds with which the same was made, and heretofore referred to by the witness, and marks the same "Exhibit Blackberry Frame Duplicate.")

Int. 9. What is the difference between the two boxes in Exhibit Loughridge No. 1, A and B?

A. "A" was sweated in the usual manner and "B" was not.

Int. 10. In the tobacco made in experiment No. 1 state how the plugs that were pressed in the mold that had the brass stamp "Blackberry" appeared when they came out from the mold.

A. The word "Blackberry" was very plain to be seen when it came out of the mold, could be seen very plainly.

Int. 11. State whether or not you have opened these boxes, and have examined this tobacco to see how it appeared after it had been put in the finisher, and packed in the boxes, and laid away for some days.

A. I have opened these two, Exhibits No. 1.

Int. 12. State how the tobacco appeared with reference to whether or not it retained the mark of the stamp "Blackberry."

A. As far as I have seen of it I couldn't make out that it was the word "Blackberry" on it.

Int. 13. Was there any substantial difference in this regard between the box that was sweated and the one that was not sweated?

A. I can't see that there is: I think they are about the same.

Int. 14. You have explained in a former answer the experiment that you made in January with the frame "Exhibit Blackberry Duplicate;" state what, if any, difference there was between that experiment and the one that you say that you made last week.

151

A. The one I made last week I tried to make it a great deal softer order then the first one was. The other was entirely too hard for tobacco that was made ten or fifteen years ago. It was too dry.

Int. 15. State whether or not you have with you the boxes of tobacco made from the molds "Exhibit Blackberry Duplicate" by this second experiment; and, if so, please produce them and have them marked as an exhibit?

A. Yes, sir. I have; and I here produce them, and they are marked "Exhibit Longbridge Experiment No. 2"

(Defendant's counsel requests that these boxes be opened, so that their contents may be inspected before any evidence is given in relation thereto.)

(Counsel for complainants states that he gave directions to have a couple of boxes of tobacco made on the exhibit, and packed in caddies, and nailed up, to be opened only in court at the hearing of the case, and that he does not himself know the result of this experiment, but proposes to leave it till the hearing.)

(Defendants' counsel objects to the exhibits, and any testimony in relation thereto, unless the boxes are opened so that he may inspect the same, for the purpose of cross-examining the witness in relation to their contents.)

(Counsel for complainants declines to open the boxes, as his design is simply with this experiment to show how the tobacco is made, and then packed away in the boxes, so that it can be opened and identified in court; that he has had one experiment opened for the benefit of the counsel here present, and proposes to keep the other closed, and says that counsel for defense is as wise as to the contents of these boxes as counsel for complainants himself is.)

Int. 16. State whether or not these boxes, "Exhibit Longbridge Experiment No. 2," have been opened since the tobacco was packed in them?

A. No, sir.

(Counsel for complainants requests the examiner to seal up the two boxes, experiment No. 2, in such manner that they cannot be opened without the breaking of the seal.

152 Cross-examination by S. S. Boyd, Esq.:

X Int. 1. Who made this frame concerning which you have been testifying?

A. I don't know.

X Int. 2. Where did it come from?

A. I brought it from Finzer Bros.' tobacco factory.

X Int. 3. Was it one of the frames that Finzer Bros. have been using?

A. I couldn't answer that question, because I don't know; I don't think they have. I have been in the press-room but very little, have nothing to do with that, except seeing this tobacco pressed, which I produce here.

X Int. 4. Who actually pressed this tobacco concerning which you have been testifying?

A. Well, I don't know his name. It was one of the regular pressmen in the press-room that does that kind of work; I was standing by and seeing what was done.

X Int. 5. Did you follow this tobacco at every step, from the time it was taken from the bundle till it was packed in the caddy?

A. I did.

X Int. 6. Did you personally go through the various processes by which this tobacco was prepared for the molds, or were they done, carried on, by the regular hands of the establishment?

A. Well, the first part, the casing of it, I done that myself. It was then stemmed by the regular stemmers, that is, two or three of them; it wasn't enough, of course, for all of them. Then it went to the twisters—that is, the hands that do that work—about three of them, and they made it into rolls; and after they made it into rolls it went into the press-room, and one of the regular pressmen put it into the molds.

X Int. 7. Up to the time that this tobacco was put into the molds, was the process, and the various steps of its preparation, the same as that followed by Finzer Bros. in the preparation of the tobacco which they regularly manufacture?

A. Well, in some it was, in others it was not.

X Int. 8. Please describe in what respect it differed?

153 A. It was put into molds and pressed in the hydraulic press, same as their other work, taken out of the molds and put in a finisher, and the only difference was in pressing it there. I had plain tins with nothing on them, and they used tins with the word "Finzer" on it.

X Int. 9. My question was confined to the process prior to putting into the molds. Will you state how the process, prior to putting into the molds, differed from that regularly followed by Finzer Bros.?

A. No, sir; it's different. Their tobacco is steamed, then dipped in sweetening, then run through a wringer, and then through a dryer.

X Int. 10. This wringer is very like the wringer used for washing purposes, is it not, and serves to remove from the tobacco the surplus moisture taken up in the dipping?

(The witness is instructed by counsel for complainants to decline to answer any questions whatsoever that are put to him by counsel for defendants in reference to the manner as to mechanism by which Finzer & Bros. treat their tobacco from the time it is steamed till

the time it is dried, as these matters are the subject of an application for a patent now pending, and the gratification of the gentleman's inquiries would disclose information that might be used by other parties to the detriment of Finzer & Bros.)

A. Well, it is something similar to that, only much larger though, and it is intended to squeeze the sweetening through the leaf, and it takes off some of the surplus; it is really intended to squeeze it and carry the sweetening all through the leaf and make it uniform.

X Int. 11. How long has dipping been in vogue in tobacco manufacture?

A. Well, I don't know as I can answer that question.

X Int. 12. Answer it as near as you can.

A. Well, I can only answer for myself. I have been using it for the last six or seven years—seven years.

X Int. 13. Do you know whether it has been used by other people as long as that?

A. Well, I know it has been used by some others longer than that; that is, in Louisville. I don't know outside of that.

154 X Int. 14. Do you know whether hand-casing such as you applied to those experiments has not been superseded by this dipping process?

A. In some places it has; others I don't suppose it has.

X Int. 15. In the manufacture of Navy tobacco has it not superseded the old hand-casing?

A. In Louisville it has; I can't answer outside of that.

X Int. 16. By this mode, dipping, can you not get your tobacco in better order than by the process of hand-casing?

A. Yes, sir; you can get it more regular.

X Int. 17. Does not the "order" in which tobacco is put prior to coming to the molds greatly affect the appearance of the tobacco when manufactured?

A. It affects the appearance of the inside of it.

X Int. 18. Prior to your watching the pressing of these exhibits had you any experience in impressing marks of any kind upon tobacco?

(Objected to by Mr. Hatch.)

A. No, sir.

X Int. 19. Prior to these experiments did you ever watch specially the process of marking tobacco at Finzer Bros.?

A. No, sir.

X Int. 20. Do you know anything of the difficulties or the requirements necessary to properly mark tobacco after it gets to the mold?

A. Well, I don't know as I do.

X Int. 21. Do you know whether or not it is necessary for the tobacco to be in any particular condition or order to make it possible to obtain a distinct and permanent impression?

A. Well, so far as I have had experience, it has only been with this—pointing to "Exhibit Blackberry Duplicate,"—and I don't

think it would be possible with this to get a good impression: that is, one that would stay after it was put in the boxes. You could get one in the mold.

Adjourned till 2:30 p. m.

155 2:30 p. m.

Examination resumed.

X Int. 22. Why could you not get one that would stay in the boxes?

A. Well, one reason is that it goes through presses twice after it is pressed in the mold, that is, it is pressed by the finisher into the box—that is my experience with this tobacco, it was that when it came out of the mold, you could see the impression very plainly.

X Int. 23. Was there any other reason?

A. That is the only reason that I know of.

X Int. 24. What would have been the effect on the appearance of the mark if you had packed directly into the caddy from the mold, omitting the pressure in the finisher?

A. Well, I couldn't answer that, for I didn't try it.

X Int. 25. Then you have not sufficient practical acquaintance with the manufacture of tobacco to enable you say what effect the omission of such pressure would have?

A. As I haven't tried it, I couldn't answer that question.

X Int. 26. Question repeated.

A. No; not with marking it, I haven't.

X Int. 27. What do you mean by that?

A. I mean by putting the marks, or the name, or anything of the kind.

X Int. 28. Have you had practical experience in manufacturing tobacco, where the tobacco was packed directly from the mold into the caddy, omitting the pressure in the finisher?

A. No, sir; most all the tobacco I have ever handled has been put through the finisher.

X Int. 29. When was it that you last handled tobacco by omitting the pressure in the finisher?

A. Well, I have done it occasionally in the last three or four years, not often though.

X Int. 30. In manufacturing tobacco, at what stage is the most extreme pressure applied to it?

A. When it is pressed in the molds.

X Int. 31. Do you know what degree of pressure in the molds was applied to these samples concerning which you have been testifying?

156 A. No, sir.

X Int. 32. Will your experience enable you to say whether the degree of pressure applied to the samples in the molds would have any effect upon the permanency of the mark?

A. I don't think it would.

X Int. 33. Then, I understand you to say, that this mark would be as permanent with a light pressure upon the molds, as with a heavy one, am I right?

A. Well, if it's too light it wouldn't.

X Int. 34. Then it is possible to put tobacco through the process you have described and, by giving it too light pressure in the molds, cause the mark to be imperceptible when the tobacco is finished?

A. Well, if you would give it too light pressure in the molds it wouldn't show as plain as if you would give it a heavy one.

X Int. 35. Do you know how long these samples were allowed to remain in the mold?

A. They were allowed to remain in one hour.

X Int. 36. If they had been allowed to remain a longer time in the mold, would not the impression have been more distinct and permanent?

A. I don't think it would?

X Int. 37. Would the condition of the tobacco, when it was put into the mold, have any effect upon the permanency of the impression?

A. Well, I think the dryer the tobacco would have been the better it would have shown.

X Int. 38. If those samples had been dryer when they went into the mold, would not the impression have been more permanent and distinct?

A. Well, to have pressed it into the finisher, then into the box, don't think it would, for those here are dryer than they made them some years ago—a good deal dryer.

X Int. 39. Were they dryer then than it is customary to make them now?

A. No, I don't hardly think they are.

157 X Int. 40. Were they as dry?

A. I think they are? yes, sir.

X Int. 41. Those samples when they went into the molds, then, were as dry as is necessary to make a good impression?

A. When they came out of the molds they made a good impression, them there did.

X Int. 42. When those samples went into the molds were they dry enough to make a permanent impression?

A. They made such an impression as you see there—or did.

X Int. 43. Question repeated.

A. Well, I don't know as they would have made any better if they had been a good deal dryer—that I couldn't tell, because I hadn't tried it.

X Int. 44. Then you cannot tell whether you can make a more permanent impression on dry than moist tobacco?

A. I believe it would show better on dry than it would on moist.

X Int. 45. Do you know how much pressure was given these samples in the finisher?

A. No, sir. It wasn't very much, though, it was simply pulled down with a small wrench about a foot and a half long.

X Int. 46. Do you know how much pressure they got?

A. No, sir, I do not.

X Int. 47. What caused this impression to disappear after it came from the mold?

A. Well, I suppose it was by pulling it in the finisher, then afterwards pulling it in the box.

X Int. 48. How long did the samples remain in the finisher under pressure?

A. Well, under pressure they remained, I suppose, about an hour and a half. We could only press one frame at a time. Well, that had to stand about one hour; that was then taken out and put into the finisher; but there is no pressure on that, only two or three blocks to keep it right where it was. The molds are filled up about six times; then they are each time put into the finisher, and the weight is just the same as before. The last time—the fifth or sixth time—the pressure went on, and stood about an hour and a half with the pressure on it.

158 X Int. 49. After the tobacco was packed into these sample caddies how much pressure was applied to it?

A. Well, about the usual pressure. I aimed to press them about the way I always pressed any other tobacco.

X Int. 50. This pressure in the caddies was a very light one, was it?

A. Well, no, sir; I can't say it was a very light one. We pulled just about the regular way we always pulled it, or aimed to pull it; that is, the regular way I always pulled it. I don't know how Finzers pulled it.

X Int. 51. Do you know how Finzer pulls it in the finisher or the mold?

A. No, sir.

X Int. 52. As compared with the pressure in the finisher how was the pressure in the caddies?

A. Well, I expect it was pulled as hard in the caddies as it was in the finisher.

X Int. 53. This wringer of which you have spoken puts the tobacco in better condition, does it not, than the practice that you follow?

A. Yes, sir; it puts it on more regular than the old way of hand-casing.

X Int. 54. How came you to make these experiments?

A. I made them by orders from Mr. Finzer.

X Int. 55. What instructions did you receive?

A. Well, he told me to make it as I made it ten or twelve or thirteen years ago—the old-fashioned way.

X Int. 56. Is that all the direction he gave you?

A. No, sir.

X Int. 57. What else did he tell you?

A. He ordered me to follow it up from the time I commenced on it until it was finished inside the box—see every part of it done.

X Int. 58. No other directions?

A. Well, the only other direction was when I got it ready for the molds to go — the foreman of the press-room and he would show me what molds to press it in.

X Int. 59. Have you now given all that he told you?

159 A. Yes, sir.

X Int. 60. You didn't know for what purpose he wanted the experiment made, did you?

A. No, sir, not on the first two packages I made. On the last two packages I made I did know.

X Int. 61. You had no idea, then, that this tobacco that you were preparing was to be marked?

A. On the first two packages I didn't.

X Int. 62. You did not know at that time that it was his purpose to make any experiments with this frame?

A. No, sir. I didn't know that there was such a frame in the country.

X Int. 63. Hadn't you at that time seen the original frame of which this claims to be a duplicate?

A. No, sir, I never have seen it until I saw it here to day, if that was it.

X Int. 64. Can you tell whether this mark would have been more permanent had it been applied to the tobacco which Finzer makes regularly?

A. Well, I don't know that it would; I could not tell that, for I never tried it.

X Int. 65. Then, your experience in manufacturing tobacco will not enable you, without previous experiment in each case, to give an opinion as to the effect upon the permanency of the mark on tobacco any change in the process of manufacture preparatory to placing it in the molds, or in the subsequent pressure, will have?

A. No, I couldn't tell that under oath without trying; the whole thing is new to me. This is all I have ever done in the way of marking.

X Int. 66. As I understand it, these experiments of yours were carried on entirely separate and distinct from the regular process of Finzer's factory from the time of taking the tobacco from the bundle until it was placed in these caddies. Am I right?

A. No. It was pressed with the same kind of machinery that the Finzers press theirs, that is, the molds were pressed under the same press that they used theirs under. The mold went under the hydraulic press where theirs go too; the making the lumps by hand was different from theirs, so was the casing of it.

160 X Int. 67. Was any of the regular manufacture of Finzer passed through the molds or through the finisher at the same time with these samples?

A. No, sir.

X Int. 68. Can you give any idea of the range of pressure of the hydraulic press used in connection with the molds?

A. No, sir.

X Int. 69. Can you get a thousand pounds pressure with it?

A. Now, I should think you could several thousand.

X Int. 70. What sort of a screw you say you had on the finisher; how was it operated?

A. Well, it was a regular retainer; there were two nuts on the top of it, and you could work those nuts with a wrench.

X Int. 71. How long was the wrench arm?

A. I suppose the whole wrench together was about 15 inches long; I reckon it may be 20; I don't think it's over 20.

X Int. 72. Well, this wasn't a wrench with the double arm, was it?

A. Yes, sir.

X Int. 73. You don't know about how much power you could get with that, do you?

A. No, sir.

Re-examination by Mr. Haven:

R. Int. 1. About how many threads to the inch were there to the screw?

A. I couldn't answer that question, for I didn't notice it close enough for that.

R. Int. 2. Was it the ordinary screw used with the finishers?

A. Well, I suppose it was.

R. Int. 3. About what was the size of the finisher—the interior?

A. Twelve inches square.

R. Int. 4. Are there not usually about four threads to the inch on the screws used with Finzer's finishers?

A. I can't answer that, for I didn't pay any attention at all to their threads.

161 R. Int. 5. Do you know whether or not they are still making any hand-cased tobacco at Finzer's?

A. Yes, sir; they made a casing last Saturday.

R. Int. 6. Is it not customary for the small manufacturers to make their tobacco hand-cased, even up to the present?

A. Not in Louisville it isn't.

R. Int. 7. Do you know about the custom in St. Louis or Virginia, on this point, in regard to small manufacturers?

A. No, sir; I do not; I have never been in their factories.

R. Int. 8. What is the effect if tobacco is pressed in the mold, and then, without being pressed in the finisher or packed away in caddies, is taken from the mold and left exposed to the air, does it retain the pressure that it has received in the mold?

A. No, sir.

R. Int. 9. What is the effect?

A. Well, it would swell up again.

R. Int. 10. Now, if tobacco were pressed in the mold, and then taken out and placed in a caddy loosely, what would be the effect?

A. Just about the same as if you would take it out of the mold and set it out any place; it would swell up, of course.

R. Int. 11. Now, if in the mold it had received a mark, and then, thus marked, was placed loosely in the caddy, without other pressure, would not the swelling tend to obliterate the mark?

(Objected to by Mr. Boyd, as leading, and directly suggesting the answer sought.)

(Question withdrawn.)

R. Int. 12. Now, supposing that tobacco were pressed in the mold, receiving there a mark, and then was taken and packed loosely in a caddy, without additional pressure, what would be the effect of this swelling in the caddy that you have just spoken of as relates to the mark?

A. Well, sir, that's an experiment that I haven't tried yet; I can say that the tobacco would swell up some, but I couldn't say what effect it would have on the mark, because I haven't tried it.

R. Int. 13. Referring to the pressure that was given in the molds to the tobacco making up the exhibits referred to, state
162 whether or not the pressure given was the ordinary pressure, or whether the tobacco received more or less than the ordinary pressure?

A. Well, sir, I aimed to pull it just about the same as I pulled any other tobacco.

R. Int. 14. How about the pressure in the finisher and in the boxes as compared with what you ordinarily give?

A. Well, I aimed to pull it just about the same way.

Recross-examination by Mr. Boyd:

R. X Int. 1. You say: "I aimed to pull it." Do you mean that you instructed the pressman how much pressure to give?

A. Yes, sir; I stood there, and told him when to stop.

R. X Int. 2. How did you tell how much pressure to give it in order to make a mark?

A. The only way I could tell, I judged by the distance between the cell frame and the block frame. I watched it till it got to a certain point.

R. X Int. 3. Suppose you had allowed greater pressure to be used in the molds, what would have been the result upon the mark?

A. I don't think there would have been any difference at all in it.

R. X Int. 4. Wouldn't the mark have been more distinct when it came from the molds if you gave it a heavier pressure?

A. Well, no, sir; gave it pressure enough to make it plain; gave it all the pressure it could stand.

R. X Int. 5. What do you mean by "all the pressure that it could stand"?

A. I mean that when you press the tobacco too much you force the cell frame up, and the tobacco will come up underneath it.

R. X Int. 6. Is that so when you have a set of frames in?

A. Yes, sir.

WILSON B. LOUGHRIDGE.

Adjourned till Tuesday morning, March 25th, 1879, at 10 o'clock a. m.

J. F. TWOHIG, *Notary.*

163 Examination resumed as per adjournment.

Also ARTHUR L. ROBINSON, a witness produced on behalf of com-

plaintiffs, being duly sworn, deposes and says, in answer to interrogatories as follows, to wit:

Int. 1. State your name, age, residence, and occupation.

A. Arthur L. Robinson; my age is thirty-five years; reside in Louisville, Kentucky; and by occupation general agent of John Finzer & Bros.

Int. 2. What experience have you had, if any, in the business of manufacturing tobacco?

A. I have been engaged in the business since about 1861; from 1861 to 1863 I was clerking for J. S. Willett & Co.; in 1863, my brother and myself went into the business of manufacturing fine-cut smoking and chewing tobacco; about '68 we added plug, and continued till '69; then was out of the business for a few months, and began again, manufacturing principally smoking tobacco; continued till '75, when I went with John Finzer & Bros., with whom I have been since that time to this.

Int. 3. In what business were J. S. Willett & Co. engaged when you were with them as clerk?

A. Manufacturing plug tobacco.

Int. 4. While engaged in manufacturing, from '70 to '75, state whether or not you manufactured any plug tobacco; if so, to what extent.

A. We manufactured some, but not to any large extent.

Int. 5. During the time you were employed with J. S. Willett & Co., and afterwards, when manufacturing by yourself, and since then while with Finzer & Bros., state what opportunities you have had for becoming acquainted with the methods and processes in use for manufacturing tobacco, and what parts of the manufacture have come under your observation during this time; state fully.

A. While I was with J. S. Willett & Co. I was forced to be all over the factory taking the time of the hands, and counting off the piece-work, as I paid off the hands, and was the only clerk at the factory; afterwards, with my own business, as I had charge or supervision, or general supervision of the business, I was conversant with every part of it; since I have been with John Finzer &
164 Bros. I have also been personally conversant with all the branches of their business.

Int. 6. What opportunities have you had from travel among the trade and from meeting other manufacturers, etc., for becoming familiar with the methods of manufacturing tobacco generally in use during the time since you have been engaged in the business?

A. Prior to 1870, I relied principally on the reports of our agents and salesmen, taking an occasional trip myself, getting more fully posted. Since 1870 I have been traveling a greater portion of the time, and have come in contact with the trade nearly all over the United States, and have been familiar with the goods made by other manufacturers.

Int. 7. Please, in this connection, state in general terms the extent of the business of Finzer Bros.; how it compares in magnitude with that of other manufacturers of plug tobacco.

(Objected to by Mr. Boyd as immaterial and irrelevant.)

A. They are ranked among the leading manufacturers of the United States.

Int. 8. Please describe the distinction between hand-cased tobacco and what is known as dipped tobacco.

A. There are two different methods of applying the sweetening to the tobacco. In hand-casing, the leaf is spread thinly over the floor or casing-box, and the sweetening sprinkled over it by a casing-broom or by a sprinkling pot. In dipping tobacco, the leaf is dipped into a tub containing the sweetening and immersed; then run through soft rubber rollers to press the sweetening more thoroughly into the tobacco and to remove the superfluous sweetening from the outside of the leaf.

Int. 9. State as near as you can to what extent these methods are in use, and whether or not both are still in use.

A. On heavily-sweetened fine Navy tobacco I think dipping preferable, and that it is generally used by the large manufacturers, although some factories still adhere to the hand-casing process in Navies. On tobacco that don't require so much sweetening I think they use principally the hand-casing process. We use in our factory both processes, principally dipping; I mean by ours, Finzer's factory.

165 Int. 10. Which of these methods would produce the most gummy tobacco, and which tobacco would be most liable to "bleed," if the wrapper were cut or broken?

A. I think that the gumminess would depend more upon the leaf you used than the process. Tobacco that was hand-cased would be more apt to bleed on heavily-sweetened Navies.

Int. 11. State, if you know, which method is commonly in use at present among the smaller manufactures in St. Louis, or has been in use for the last two years?

(Objected to by Mr. Boyd, as immaterial and irrelevant.)

A. I think hand-casing; although I don't positively know.

Int. 12. State if you know, what, if any, trade advantage there is in having plug tobacco marked with an indefaceable indentifying name or trade mark. Explain fully.

A. It is essential to the success of any manufacturer who makes fine goods. Before we had identifying marks on plug tobacco, the jobber who bought direct from the manufacture for the sake of making a larger profit, was continually trying to substitute and palm off inferior goods to the retailer. The retailer, on his part, for the same reason, after he had sold out one box of fine tobacco, would slip inferior tobacco into the box that had the brand or label on of the fine tobacco, which he had been selling, and hand the inferior tobacco to his customers, as the same goods they had been buying. The consumer, finding his tobacco was not so good, and believing it to be made by the same manufacturer, whose goods he had liked, got disgusted, thought the manufacture was wilfully running down his goods, and refused to buy them again. In short, it was a substitution all through the trade of cheap and inferior goods for the sake of more profit, in place of an established brand of fine tobacco,

which forced the manufacturer to make cheap tobacco to try and meet this state of affairs and injured greatly those manufacturers who had the knowledge and ability to make fine tobacco.

Int. 12. How does the process of marking tobacco with an indelible mark prevent the substitution that you have referred to?

166 A. The consumer finds or cuts a plug of tobacco which he buys a perfect impression of the name or trade-mark of the manufacturer; having the identifying mark the retailer is unable, if he (the consumer) likes the tobacco and calls for it, to substitute anything else in plug cut at without his knowledge and consent.

Int. 13. How does the certainty of identification and the habit of consumers calling for the tobacco to which they have become accustomed affect the price of tobacco, wholesale or retail; supposing two qualities of tobacco of the same quality throughout, except that one is marked with the identifying impression and the other is not, which would bring the best price or sell most readily now, since marked tobacco has become generally introduced?

(Objected to by Mr. Bond as immaterial, irrelevant, and incompetent.)

A. In those sections of the country where marked tobacco has been thoroughly introduced it would be hard to sell, except at reduced price, tobacco that has no distinguishing mark on it, the trade regarding good, that have no mark on them as generally being inferior goods, and this idea or prejudice make them unwilling to buy them, unless some decided improvement is offered in price.

Int. 15. Is there any mechanical advantage in having a mark impressed into the plug of tobacco, like this word "Finzer" impressed into the surface of the plug which I now show you, and which is marked "EXTRA Finzer Plug"? If so, explain fully what that mechanical advantage is.

A. I think it beautifies and adorns the plug as to its appearance and salability, and that it also aids in preventing the tendency of the plug to swell; the greater pressure received at the points of indentation aids in solidifying and holding together the layers of filler, and attaching more closely the wrapper to the filler.

Int. 16. What effect has this binding together of the laminae of the tobacco of which the plug is made up, so far as concerns the working in of air between the layers, when the plug is exposed?

A. If the plug was made solid the air can't work in.

Int. 17. What influence does air do to the plug when it works in between the layers?

167 A. If the plug swells it becomes unsalable. I should think that the swelling of the plug was caused more by the elasticity of the tobacco than the air working in.

Int. 18. What effect has this marking and finishing of tobacco, with regard to the quality of the wrapper that may be used?

A. It enables a manufacturer to work successfully a lighter and thinner wrapper, which he can buy much cheaper, as the pressure received at the point of indentation aids in keeping the thin wrap-

per firmly attached to the plug, and the marks improve the appearance of the interior wrapper, and makes the goods desirable and salable.

Int. 19. What office does the wraper principally perform in plug tobacco? Is it for ornament, or for use, or for both purposes? Please explain its function.

A. It is generally used solely for ornament and is a detriment to the chew—the chewing qualities of the plug being in the filler.

Int. 20. What proportionate part of the cost of the plug does the cost of the wrapper that is used bear to the cost of the filler, as near as you can state?

A. Fine wrapper, such as we work, cost from 40 to 60 cents per pound. Fillers would cost from 7 to 10 cents a pound. One pound of wrapper, as we work it, would wrap about 9 or 10 pounds of filler.

Int. 21. Then the cost of the wrapper that is generally used on a plug is about three-fifths of the cost of the filler that is used, is it not?

A. Yes, that is just what it is—six-tenths. In manufacturing, we generally add the cost of the wrapper to the filler.

Int. 22. State whether or not, if you know, it has long been a desideratum among tobacco manufacturers to put an indelible distinguishing mark upon plug tobacco, and whether you know of any efforts having been made to that end among the trade, prior to the introduction of the Miller & Worley process.

A. I think the necessity has long been felt among those making fine tobaccos, and have learned of attempts to accomplish this result prior to the Miller & Worley patent.

168 Int. 23. Please specify the efforts to which you allude and state fully the result of them, so far as you know.

A. I think the first I heard was from my brother, who told me that Mr. Louis Maddux, of the firm of Maddux Bros., Cincinnati, had asked him whether he couldn't stamp a name into the tinfoil plug tobacco made by Dill, of Richmond, Va., and which Maddux Bros. then sold largely. I am not aware that any experiments were made by either of these parties. My brother tried to impress a mark on tobacco, I think about '72 or '73, but it didn't work, and he quit it. P. Lorillard & Co. also attempted to mark tobacco with an impression. At the time they were experimenting with other devices for identifying their plug to the consumers, they used it in the molds, and abandoned it, and took up their tin-tag patent. The Pioneer Tobacco Co., of Brooklyn, also made some experiments to make an impression on plug tobacco, and abandoned it. Also, Buchanan & Lyall, of New York. I have been told of other parties who had this idea floating around loose in their heads, but never did anything with it.

Int. 24. Do you know why these efforts that you referred to failed to produce any practical result?

A. I think all these attempts to place a mark on tobacco were done at the time they received their first pressure, and before the tobacco became solidified or "set," and the natural tendency of tobacco to

swell, in addition to the pressure received while the manufacture was being completed, obliterated or made the mark imperfect.

Int. 25. How many and what pressures is a plug of tobacco subjected to in the ordinary process of manufacture? State fully.

A. It is subjected to a severe pressure in the molds; from thence it is taken to the finisher and receives a lighter pressure; thence, from the finisher it is packed in boxes or caddies, and receives another slight pressure.

Int. 26. How is this first heavy pressure usually applied and about what pressure per square inch is usually given?

A. By hydraulic ram, and Finzer Bros. give it a pressure of four or five thousand pounds to the square inch. Other parties, I suppose, give it the same.

169 Int. 27. Please explain how the pressure of the hydraulic ram is applied—in what the tobacco is contained while it is applied. Describe fully.

A. The tobacco is first placed in a set of moulds, which consist of several cells, and with blocks to fit closely into same, attached to a frame, and when ten or twelve frames are all filled, which make, what we call a set of moulds, the tobacco in the set is run under the big hydraulic ram, and pressure applied.

Int. 28. What is the form of the tobacco when it is put into these cells to receive its first pressure?

A. If it is hand-made tobacco, it is in cylindrical rolls. If the roll or lump is formed by a plug machine, it is oblong, the same shape of the plug after it is pressed, only much thicker, no pressure having been applied to it.

Int. 29. About how long is the plug subjected to this pressure under the hydraulic?

A. Generally about an hour, but often, in press of work, it is broken up much quicker.

At this point examination adjourned till 2:30 o'clock this p. m.

J. F. TWOHIG, *Notary.*

Examination resumed as per adjournment.

Int. 30. About what pressure is the tobacco subjected to in the finisher, as near as you can tell?

A. I don't know as I can tell exactly, the pressure is much lighter than it is in the molds; I should think not over a third or a fourth.

Int. 31. During how long a time is the pressure usually applied to the finisher, in the ordinary process of manufacture?

A. About an hour or an hour and a half.

Int. 31½. After the tobacco has received such severe pressure in the mold, what is the object of giving it the additional pressure in the finisher?

A. The tobacco when it comes from the molds is more or less imperfect; the lumps frequently having feather edges and a
170 rough appearance, and, unless immediately put in the finisher, swell. The tin division plates of the finisher placed on each layer of tobacco, when the pressure is applied in the finisher, re-

moves the rough appearance and imperfection of the work as it comes from the molds, and gives it the gloss and finish that is necessary to first-class workmanship.

Int. 31. State whether or not, in your opinion, this pressure in the finisher has any tendency to "set" the tobacco firmly and prevent its swelling.

A. It does.

Int. 32. State what the effect would be of trying to form the plug of tobacco by sudden, quick, hard pressure, quickly relieved, and whether or not you have ever made any experiments that developed the effect of such a treatment of tobacco. State fully.

A. It is impracticable to make a plug of tobacco by quick, short pressure, as the tobacco will swell up. We got up in our business, about '68, an expensive and elaborate machine to supersede molds; the machine worked beautifully, but being constructed on the principle of forming the plug by severe, quick pressure, the plug swelled when relieved from pressure, and we had to throw the machine away, or sell it for old iron. The machine cost from $1,500 to $2,000.

Int. 33. From your knowledge of the trade, derived from your experience, state who first introduced to the trade tobacco marked with an ineffaceable identifying impression, pressed directly into the face of the plug.

A. Miller & Worley & John Finzer & Bros.

Int. 34. How did they get that ineffaceable impression?

A. By the use of the ordinary tin, with raised devices on it, and impressed in the plug while undergoing pressure in the finisher.

Int. 35. Why is tin ordinarily used as the material to be employed in the finisher?

A. Having a smooth, perfectly uniform surface, it gives a better polish to the tobacco.

Int. 36. I understand, then, that in the use of this process you bring the smooth surface of the tin directly in contact with the surface of the tobacco; is this correct?

171 A. Yes, sir.

Int. 37. State, if you know, whether or not, since the introduction of this process by Miller & Worley, and the purchase from them by Finzer & Bros. of their interest therein, other parties have acknowled the utility of this invention, and purchased the right to use the same; and, if so, what other parties?

A. Yes, sir. The Dousman & Drummond Tobacco Co., of Alton, Illinois; P. Lorillard & Co., of Jersey City, N. J., and Allen & Ellis, of Cincinnati, O.

Int. 38. State, if you please, how these concerns compare in the magnitude of business with the other manufacturers of plug tobacco.

A. P. Lorillard & Co. are the largest manufacturers in the United States. The Dousman & Drummond Tobacco Co., one of the largest in the West, and Allen & Ellis are large fine cut manufacturers, who have recently added plug to their business.

Int. 39. State whether or not this P. Lorillard & Co. whom you

say have parted of the right to use the Miller & Worley invention is the same contained that you mentioned in the early part of your deposition as having endeavored, in the first place, to mark tobacco by pressing upon it a mark while in the mold.

A. It is the same house.

Int. 10. State whether or not you were present at the experiment conducted at Louisville, by Wilson B. Loughridge, during last week, in which he made tobacco, using the molds "Exhibit Blackberry Duplicate," which tobacco so made and pressed appears in "Exhibit Loughridge Experiment No. 2," and if you were present, and attended upon that test, please describe the same fully. State how the tobacco was prepared in the first place, how treated, and how pressed, and how the preparation of the same compared with, or differed from, the preparation of tobacco made by Boyce, of St. Louis, in 1870, and for some time thereafter, if you know.

(Objections made to any evidence touching the contents of said exhibits, or the treatment the same received, unless the same are opened for inspection for the purposes of cross-examination.)

A. I was present. The leaf was spread on the floor, thinly, and the sweetening sprinkled over it with a broom; then it was
172 taken to the stemmers and stemmed; then made into rolls by hand and taken down to the press-room and pressed in this frame or mold, with the word "Blackberry" on one block. It was then pressed under the hydraulic ram, and remained under pressure one hour. The lumps were then taken from the mold, showing a perfect impression, with the word "Blackberry" on the lump that was in that cell in the mold. It was then packed in the finisher, and stayed under pressure there about two hours; it was then packed in caddies. While being packed in caddies, I saw that the impression with the word "Blackberry" was imperfect. We aimed to handle this tobacco, in each stage of its manufacture, exactly as was done in making common, heavily-sweetened black tobacco that was made from '65 to '75.

Int. 11. Were you present at St. Louis at the time C. F. Loker, Joseph Boyce, and others testified in the case as to tobacco made by Boyce along in 1870, or thereabouts, and did you hear the evidence there as to how the tobacco was prepared? And if so, please state how the preparation of the tobacco for this experiment compared with, or differed from, the preparation of the tobacco as described by Loker, Boyce, and others at that time.

A. I was. The sweetening was put on in the same way—by hand-casing; and while none of them stated whether he made his lumps by hand or by plug machine, I think, from the whole testimony in regard to his being a small manufacturer, with small means, that he had no plug machines, and that his lumps were rolled by hand, exactly as these were. The pressure in the press-room, I suppose, was the same, although I don't think he had any hydraulic ram.

Int. 12. State whether or not you have compared the "Exhibit Blackberry Mold Duplicate" with defendants' Exhibit "Blackberry

Model," and, if so, how the same compare or differ, your attention being especially called to the block with the word "Blackberry" upon it in raised brass letters.

A. It was meant to be an exact duplicate, and, as far as I can judge with my eyes, it is a success. I have compared this with the original block with the word "Blackberry" on, and, as far as I can
173 judge by my eyes, it is a perfect duplicate. I have not compared the frame of molds, but remember that the original frame of Boyce's, with the word "Blackberry" on one block, had fifteen blocks to the frame, while the frame with this duplicate block on has eighteen blocks to the frame.

Int. 43. Did you examine the original set of molds at Mr. Boyd's office at the time testimony was taken there in this case?

A. Yes.

Int. 43½. State whether or not, from your examination of the original frames at St. Louis, and the examination of this frame here, you see any substantial difference between the two sets of frames, except that we have three more blocks upon this frame.

A. I do not.

Int. 44. State whether or not you were present at Finzer & Bros.' factory on the 12th inst. at a test made with a machine alleged to be constructed in accordance with the English patent to Gibson & Kennedy, pleaded in this case.

A. I was.

Int. 45. Please describe how the tobacco was prepared for that test, and the condition the tobacco was in when it was put into the machine.

A. I didn't see the tobacco prepared for that test. It was, I think, regular filler, wrapped up in a long roll, with a wrapper on, and was in rather dry order for that class of work, which is generally pressed very soft.

Int. 46. What was the size of the roll?

A. I think about an inch and a half in diameter.

Int. 47. What was the condition of the tobacco in reference to sweetness, as near as you could tell from examining it?

A. I didn't examine the filler. If it was, as I suppose, our regular filler, it would have a reasonable quantity of sweetening on. I examined more with reference to the order.

Int. 48. How was it put into the mold or machine?

A. It was coiled around the central sheath until it filled the machine one layer, then tin with the word "Finzer" impressed on it was laid on the tobacco from six or ten places, then a tin wooden disk, with a hole in the center to slip over the sheath, placed
174 on the tobacco, then a circular-formed tin put on top of that, then another layer of coiled tobacco, and the tin with the names, the wooden disk, and the round tin were placed on top of that, then another roll treated in the same manner, then it was pressed.

Int. 49. How did the tins that were pressed into the tobacco each compare with or differ from one of the single tins, such as

make the word "Finzer" on the Exhibit Finzer Plug, now shown you?

A. They were identically the same, being taken from our regular tins.

Int. 50. After the tobacco was pressed in this machine did you see it when it was taken out and packed into the caddy or drum?

A. I did.

Int. 51. How was the impression on it at that time?

A. Very distinct.

Int. 52. Describe how it was packed into the drum.

A. Just as tobacco is always packed—one layer on top of the other.

At this point adjourned till 9:30 to-morrow morning, March 26th, 1879.

J. F. TWOHIG, *Notary.*

Examination resumed as per last adjournment.

Int. 53. State, if you please, as near as you can, the expense of a modern set of molds.

A. The price varies, owing to the size of the work made—the number of cells to the frame—I think from about $125.00 to $250.00 to $280.00.

Int. 54. How much, in your opinion, would the cost of a set of frames be increased if they were arranged so as to have a mark like the word "Blackberry" in Exhibit Blackberry Duplicate on the face of each block?

A. I could only give you a rough estimate; I should think it would almost double the cost of a set of molds, and taking into consideration that we put several different marks on the same sized plug now, which would compel us to have more sets of molds to put those same marks on than is used under the present system.

Int. 55. About how many sets of molds do Finzer & Bros. now use?

A. I don't know, sir, exactly; I can only give you an estimate on that; we have molds to make, I think, about 40 styles of tobacco; I should think somewhere between 50 to 75 sets of molds, as near as I can guess it.

Int. 56. From this data that you have given, state, as near as you can, what it would cost to fit up the molds that are used at Finzer's so as to have a mark like the word "Blackberry" in the exhibit, on the face of each block.

A. I think it would cost about $10,000, sir—from $8,000 to $10,000.

Int. 57. What is the cost of preparing the tins for making the mark in the finished in a place of business like Finzer's, and in what does that cost consist?

A. We make that mark with a die plate, which is pressed into the tin by our hydraulic ram. The cost of the die plate is about $25 or

830. We require a separate die plate for each different trade mark we put in the plug.

Int. 58. About how many different marks do you use?

A. I think we have from seven to ten die plates.

Int. 59. When you use the word "die plate" here as costing about $25.00 or $30.00, does this include both the male and female die between which the tin is pressed?

A. Yes, sir; I so understood it.

Int. 60. In the early part of your deposition you gave it as your "opinion" that the finishing of tobacco in the finisher prevented its swelling. Please state what your "experience" has been in regard to this matter; state whether or not your "opinion" as expressed is corroborated by your experience.

A. My experience is that tobacco properly manufactured takes its permanent set with the pressure received in the finisher; I judge that from the fact that an impression placed in the tobacco while undergoing pressure in the finisher remains ineffaceable.

176 Cross-examination by S. S. Boyd, Esq.:

X Int. 1. In the manufacture of tobacco the first step is to moisten the leaf after it is taken from the bundle in order to remove the stem, is it not?

A. In dipped tobacco it is, not in hand-casing.

X Int. 2. In hand-casing what is the first step?

A. The tobacco leaf is untied and spread thinly on the floor with the stem in it, then cased by a broom.

X Int. 3. The next step, then, is to remove the stem—that is, to take the leaf from the stem—is it not?

A. After the tobacco is in proper order, yes. It must be well shaken up to distribute the sweetening evenly.

X Int. 4. This answer refers to hand-cased tobacco only, does it not?

A. I think so, sir.

X Int. 5. In dipped tobacco the next step after moistening is to remove the stem, is it not?

A. Yes, sir; that is the general process.

X Int. 6. This moistening is generally done by water, is it not?

A. By water or steam, either, sir.

X Int. 7. After the stem is removed in dipped tobacco, what next is done?

A. It is dipped.

X Int. 8. It is dipped in a mixture composed principally of water, sugar, and licorice, is it not?

A. I think so, generally. Factories vary very much in the different articles that they use in their sweetening.

X Int. 9. Factories vary very much also in the proportions of the ingredients contained in their dipping solution, do they not?

A. I believe they do, sir.

X Int. 10. When, so far as you know, was dipping first used in the manufacture of tobacco?

A. I think about 1860, sir.

X Int. 11. After the tobacco is dipped it is then run through a wringer, or some other process, for the purpose of distributing the sweetening through the tobacco, as well as to remove any surplus, and then hung up to dry, is it not?

177 A. It is generally run through a wringer and then dried either by air or by some other process.

X Int. 12. Is this same thing done, so far as the drying is concerned, to hand-cured tobacco after it has been properly sweetened?

A. In making black, sweet tobacco, I think the custom generally was to make it into hunks after it was drawn into order, without hanging it up to dry.

X Int. 13. How, in hand-cured tobacco, can you get it in order without hanging it up to dry, or spreading it out to dry?

A. Well, the sweetening being sprinkled on the dry leaf, it was then shaken up thoroughly by hand, and then put into a pile or bulk to draw over night, so as to be in order to work next morning.

X Int. 14. Then, in hand-cured tobacco, the hanging up to dry was omitted whenever the amount of sweetening put upon it was not great enough to render it necessary to hang it up to dry?

A. I think the custom generally was not to hang it up, sir.

X Int. 15. Down to what time does your answer apply?

A. Down to the present time, so far as my knowledge goes.

X Int. 16. After the tobacco has been sweetened, whether hand-cured or dripped, and, if dipped, the tobacco has been hung up to dry, the tobacco is then bulked, that is, put into a heap, and allowed to remain for a considerable time, in order to draw, is it not?

A. Remains in the bulk until it is drawn, yes, sir.

X Int. 17. Then, after it is drawn sufficiently in either case, the tobacco is made into a hunk, is it not?

A. Yes, sir.

X Int. 18. After this the hunk is made by hand into the shape, as near as possible, of the plug, and wrapped, or else the hunk is passed through what is called a plug-machine, which gives it the exact form and shape of the plug, and is then wrapped, is it not?

A. Yes, sir.

X Int. 19. The wrapped hunk is then dried, is it not?

178 A. No, generally, sir, I think not; it is presumed to be already in proper working order.

X Int. 20. The wrapper when put upon the hunk is wet, is it not?

A. It is soft enough to work, sir.

X Int. 21. That softness is due to the moisture in the wrapper, is it not?

A. Yes, sir.

X Int. 22. And whether the hunk is dried or not will depend upon its condition after it is wrapped, will it not?

A. If the filler is in proper order, I don't think it is customary to dry the hunk.

X Int. 23. If it is not in proper order do you not dry the hunk after it is wrapped?

A. If the filler is not in proper order a good manufacturer will not work it.

X Int. 24. Is it not a general custom for manufacturers to spread their lumps, and allow them to stand after wrapping?

A. Where they desire to make very bright tobacco, and take out all the moisture from the wrapper, they sometimes dry the lumps; I think the custom latterly, at least with John Finzer & Bros., is to pack their lumps in boxes, and let them set until they get in proper order.

X Int. 25. Then, if the lump is not in proper order when wrapped, it can be put in order by bulking, or allowing it to stand, can it not?

A. That is done more, I think, to bring the wrapper in proper order.

X Int. 26. Then, if the wrapper is not in proper order, a good manufacturer will put it in proper order, by allowing it to stand, or in some other way, will he not?

A. Yes, sir; he won't work it unless it is in proper order.

X Int. 27. After the lump is in proper order, it is then put into the molds, is it not, and pressed?

A. Yes, sir.

X Int. 28. After it has been sufficiently pressed in the mold, in some cases it is packed directly into the caddy for the market, and in other cases, into a finisher, from which it is packed into the caddy, is it not?

179 A. I think when tobacco goes into the molds a good manufacturer will always pack it in the finisher before putting it into the boxes. Twists, coil, and fancy tobacco, that don't go into the molds, I think they generally pack directly into the boxes or packages.

X Int. 29. My question was not what a good manufacturer or a bad manufacturer will or ought to do, but whether, as a matter of fact, the tobacco of which we are speaking, plug tobacco, is not sometimes packed directly from the mold into the caddy. Can you answer that question?

A. I have never seen tobacco, after being pressed in the regular mold, packed directly into the package from the mold.

X Int. 30. Then you have no personal knowledge of the different modes of manufacturing tobacco, so far as this stage of the process is concerned?

A. I have heard the testimony of those gentlemen at St. Louis who stated that Boyce manufactured tobacco that way. I don't know whether that is personal knowledge or not.

X Int. 31. Will you state that this testimony to which you refer is all that you have upon which to base your testimony as regards the use of this mode of manufacture?

(Question objected to by Mr. Hatch, as misleading, for the reason that the witness has not anywhere testified as to any method of manufacturing tobacco by pressing it first in the mold and then putting it directly into the caddy, with the exception of the experiment referred to as the English patent.)

A. I examined a machine once that was an attempt to accomplish this end, and to enable manufacturers to do without the finisher, at Musselman & Co.'s, Louisville, Ky. It was a combined mold and finisher, but didn't make good work. I understand that they gave it up.

X Int. 32. Then those two things, the testimony at St. Louis and the Musselman machine, are all you have to base your knowledge of this matter upon, is it?

(Same objection.)

A. I have the impression that sometimes manufacturers, especially small ones, with imperfect machinery, have packed goods, cheap, rough goods, principally made for the negro trade South, into
180 the caddies from the mold. I think it is but seldom done, as it is almost impossible to make decent workmanship that way.

X Int. 33. You say "almost impossible." Do you mean that it is impossible to do it?

A. I think it is so difficult that no manufacturer, who desires to make good work, would attempt it.

X Int. 34. Did you ever try it yourself?

A. I saw that experiment tried there, sir.

X Int. 35. that "experiment there" (referring to the caddies introduced in evidence here) was done by passing it through the finisher, was it not?

A. Yes, sir; I made a mistake in referring to them.

X Int. 36. Did you ever try it yourself; packing tobacco directly from the mold into the caddy?

A. No, sir; not that I remember.

X Int. 37. Since 1870, you have not manufactured tobacco, have you?

A. My brother and myself engaged in the manufacture of tobacco from 1870 to 1875. I, myself, was traveling the greater portion of the time.

X Int. 38. Your brother was the one who had charge of the manufacturing of your establishment, was he not?

A. Yes, sir; more especially that, and other duties at home.

X Int. 39. In the manufacture of tobacco, is there any skill required in preparing the tobacco for the molds?

A. I think manufacturers generally believe so, sir.

X Int. 40. Do you agree or disagree with them on this point?

A. I agree.

X Int. 41. If the tobacco is not properly sweetened, will that have any effect upon the tobacco when finished?

A. It won't make a good chew.

X Int. 42. Is that the only effect it will have?

A. If the deficiency is only in the sweetening? I should think that that would be the main defect.

X Int. 43. What is the "ordering" for—that is, the putting it into piles, as you have described?

181 A. Well, sir, it is to make it into proper order to work—soft and pliable—neither too dry nor too soft.

X Int. 44. If it is too soft, how does that affect the finished plug?

A. Well, if it is too soft, and ain't sold before warm weather, it will mold.

X Int. 45. It will also affect the regularity of the outline of the plug, will it not?

A. Yes; the lumps would have a tendency to press into one another.

X Int. 46. It requires considerable skill and experience to properly "order" tobacco, does it not?

A. I think so, sir.

X Int. 47. Has there been any improvement in the "ordering" of tobacco within the last ten years?

A. We work tobacco much drier, I think, now, sir, than we did then.

X Int. 48. What effect upon the finished plug has this change had?

A. Well, sir, it makes that drier.

X Int. 49. Does it not, also, make it more uniform in outline and smoother in appearance?

A. I don't know that it makes it any smoother in appearance; it would make it more uniform in outline, as compared with very soft goods.

X Int. 50. Very soft goods would have a tendency to stick together on their faces, as well as the edges, when pressed in the caddy, would they not?

A. Yes, sir; in heavily-sweetened soft tobacco we formerly had a great deal of trouble from the sweetening coming through the wrapper at places, and causing the wrappers to stick together, and the sweetening also bled, or oozed out at the end of the lumps, and sometimes came out on the outside of the packages at the edges.

X Int. 51. In such case the plug, when taken from the caddy, would not be as smooth in appearance, would it?

A. Where the sweetening had come through the wrapper,
182 and the plugs stuck together, in taking the plugs apart you would be apt to tear away a part of the wrapper with them.

X Int. 52. Is tobacco, when made into a lump, at all elastic, whether made by hand or plug machine?

A. It don't swell before any pressure is put on it—in its natural state, if that's what you mean.

X Int. 53. Is that the only answer that you can give to that question?

A. Till the question is put in more definite form, I think it is.

X Int. 54. Don't you know what is meant by elasticity?

A. Elasticity is that, I believe, which rebounds and resists pressure, ain't it?

X Int. 55. Does the lump of tobacco do this?

A. I don't think it like pressure—tries to swell up again as soon as possible.

X Int. 56. One object of pressing the tobacco is to overcome this tendency of the tobacco, is it not?

A. Yes, it.

X Int. 57. The completeness with which this tendency is overcome will depend both upon the degree and duration of the pressure, will it not?

A. I suppose it does in a great measure.

X Int. 58. Will not moderate pressure, long continued, effect this result much better and more certainly than a greatly increased pressure of short duration?

A. If the duration is very short it won't bring the result at all.

X Int. 59. Is that as definite an answer as you can give?

A. I think the way to overcome this tendency of the plug to swell is better obtained by successive pressures than by one pressure, even if it remains under pressure for some time.

(Answer objected to by Mr. Boyd, as in nowise responsive to the question, and the original question is repeated.)

(Repetition of the question objected to by the counsel for complainants, as the question has been fairly and fully answered heretofore.)

183 A. A. I answered before, a short quick impression won't produce the result at all. A very long and continued pressure might produce the result or not.

X Int. 60. Under what circumstances would it produce it, and under what circumstances would it not produce it?

A. I can hardly answer that question, as I have never tried any experiments of that kind. Machinery and time are too valuable in a tobacco factory to justify us in determining the question, which would be valueless in our business on account of the time and machinery required.

X Int. 61. Then when you answered my question you knew nothing whatever about the matter, and had nothing upon which to base your statement?

A. I had nothing, except the usual custom in tobacco business, and the experience of that.

X Int. 62. Then your experience does not enable you to say whether the duration of pressure will meet a lessening of degree of pressure?

(Objected to by Mr. Hatch, as indefinite.)

A. In the tobacco business factories aim to obtain the desired result with as little loss of time and as short use of machinery as possible, and experiments will naturally be to further that end, and not to lengthen the time or increase the use of machinery.

X Int. 63. The pressure that is used must be sufficiently great or long-continued to cause the tobacco to take its permanent set, must it not?

A. We obtain a permanent set in the tobacco business by successive pressures, not by one long-continued pressure.

(Answer objected to by Mr. Boyd, as not responsive.

X Int. 64. Do you mean to state that a permanent set cannot be obtained by a single pressure?

A. I have never experimented on this idea, but think that any long-continued pressure in the molds or tobacco machinery that was practicable in manufacturing tobacco would be likely to fail to produce the result, as the trade have always relied on successive pressures.

X Int. 65. Why should not the single pressure produce the "set"?

184 A. I don't know as I can answer the question; we find that successive pressures do obtain the result, and have never experimented on the other idea.

X Int. 66. Then you can give no reason why the single pressure should not produce the "set"?

A. We know practically in the business that if we press tobacco as hard as it can be pulled, let it set over night under pressure, that it is then comparatively easy to press it still further; let it set again and you can pull it still more. As to the question whether if you would let it remain under pressure for a year it would retain the first pressure is something I never experimented with.

X Int. 67. Do you mean that there is no limit to the degree of pressure of which tobacco is susceptible?

A. I mean that it seems almost impossible to attain that limit at the first pressure.

X Int. 68. That is, if the limit of pressure necessary be, say, 4,000 pounds to the square inch, you must apply that pressure at different times and different amounts. Do I understand you correctly?

A. I mean that if 4,000 pounds per square inch was the greatest pressure you could put to the tobacco at first, after a lapse of time it could receive still further additional pressure?

X Int. 69. When the tobacco has obtained its permanent set can it be rendered more compact by further pressure?

A. Well, sir, it would be very difficult to state just when tobacco couldn't receive a further impression; we find in the business practically that it receives a permanent set, which is sufficient for our purposes, by the pressure it receives in the mold and finisher.

X Int. 70. How long is the pressure continued in the mold by Finzer?

A. From a half hour to an hour; sometimes the mold is broken up in fifteen minutes, when we are in a hurry for any particular kind of work; I think the general custom is about an hour.

X Int. 71. How long does Finzer allow the tobacco to remain in the finisher?

185 A. The regular process is about an hour, I believe,—one to two hours. We also use the Worley & McCabe patent finishing process, which takes much longer.

X Int. 72. How much longer?

A. It stays in all night.

X Int. 73. That is, it remains in the finisher under pressure, though removed from the pressing machine, all night?

A. In the Worley & McCabe process it does.

X Int. 74. How largely does Finzer use this process?

A. Since they bought out McCabe's interest in this patent. I think they have used it almost for the larger portion of this work, and may be for some time before buying his interest in the patent. I don't remember the exact time that they commenced to use the process.

X Int. 75. The patent to which you refer is No. 181,512, referred to as the patent now in suit?

A. I think it is the same.

X Int. 76. This sample marked "Exhibit Finzer Plug" was made under this process patented to Worley & McCabe, was it not?

A. I couldn't answer positively, sir. I don't know how old the plug is. I think it probably was.

X Int. 77. When, as near as you can fix it, did Finzer begin to use this Worley & McCabe process, the date of the patent being August, 1876?

A. I think we began using it in a small way, to see how it would work, about last summer, I think, sir. It may have been a month or two earlier, may have been a little later, but I think it was last summer.

Adjourned at this point until 2.30 o'clock.

J. F. TWOHIG, *Notary.*

Examination resumed 2.30 p. m.

X Int. 78. Do you find that this Worley & McCabe process affects the permanency of the mark that is placed upon the tobacco?

186 A. I don't think that it does.

X Int. 79. When you did not use this process, how long did you allow the tobacco to remain in the finisher?

A. From one to two hours; I think generally about one.

X Int. 80. Why did you make a difference in the time between one and two hours?

A. I think just as they needed the work to press; sometimes they break them up faster, sometimes slower.

X Int. 81. This difference in time had no effect upon the permanency of the mark, did it?

A. I don't think so; either remained permanent.

X Int. 82. Were you always enabled to obtain equally permanent and distinct marks upon your tobacco prior to the use of the Worley & McCabe process?

A. I think so, if the tobacco was packed in proper order.

X Int. 83. By "packed in proper order" you mean proper order before it was put into the molds, do you not?

A. I mean proper order at the time it was pressed.

X Int. 84. Is there any pressure applied to the tobacco prior to its being put into the mold?

A. In machine-made plugs the filler is run through iron rollers

and cut off a desired length. This presses the leaf slightly; these cuts are then packed in a big box, the box filled up, and an old iron weight of any kind placed on it, to prevent the lumps or cuts from swelling out of the box before the rollers are ready to put the wrapper on.

X Int. 85. After the wrapper is put on, is anything done to perfect the order in which the tobacco is?

A. If the wrapper is too dry, the box of lumps are placed in a room with moist atmosphere until the wrapper draws soft enough. If the wrapper is too soft by being placed in a box with a filler inside, the filler, being dryer than the wrapper, will absorb the moistening in the wrapper and bring it in order. This may also be attained by spreading the lumps out on racks and drying them.

X Int. 86. After the lump is placed in the mold, can anything be done to it to affect its order without taking it out of the mold?

A. As long as it remains under pressure in the mold, with
187 the air and everything else excluded from it, I should think it would be very difficult to affect its order.

X Int. 87. Then the proper order upon which depends the permanency of the mark is the order of the tobacco at the time it is put into the mold, is it not?

(Objected to by Mr. Hatch, for the reason that it nowhere appears that the permanency of the mark depends upon the order, and the question is therefore misleading.)

A. I think so, provided it goes immediately through the other processes of pressure.

X Int. 88. You said, in your answer to cross-interrogatory 82, that you were able to obtain equally permanent and distinct marks, if the tobacco was packed in proper order; now, will you state whether your tobacco was always packed in proper order?

A. John Finzer & Bros. have been uniformly successful in packing their tobacco in proper order; I have seen, however, (as mistakes will occur in the best regulated families,) tobacco that was packed too dry, as well as too soft, made by them.

X Int. 89. Is this necessity of having the tobacco in proper order equally great, whether the tobacco is to be marked or not?

A. Good order is essential to the proper manufacture of tobacco, whether marked or unmarked.

X Int. 90. Is it any more essential in the one case than the other?

A. I don't think it is; it is impossible to make good workmanship, unless the tobacco is in proper order.

X Int. 91. Is this a fact of recent discovery, or has it not been known ever since you began, yourself, to manufacture tobacco?

A. I think it has always been so.

X Int. 92. How much tobacco does Finzer manufacture by hand-casing?

A. It is a small proportion of our business; we make two grades of hand-cased tobacco, one of which sells well.

X Int. 93. Do you mark either grade of hand-cased tobacco?

A. We do—the grade which I mentioned as selling well, and

which is one of our regular established brands of tobacco; the other grade is a cheap tobacco on which we don't want our names to appear."

188 X Int. 95. Is the mark on this hand-cased tobacco permanent and distinct?

A. I think it is. The tobacco goes East, where I do not regularly travel; but we have never had any complaint, to my knowledge, of the mark not being permanent and distinct, and we certainly should have heard so if it did not remain.

X Int. 95. How long has Fitzer made this fine grade of hand-cased tobacco?

A. For some time; two or three years—maybe longer.

X Int. 96. Hasn't he made it ever since you have been with him?

A. I don't exactly know. I think probably he began making it after I went there; but wouldn't be certain.

X Int. 97. Do you know whether he made any hand-cased tobacco prior to your going there?

A. I can't say. I know very little of their business prior to my going there.

X Int. 98. Was he hand-casing when you first went there?

A. He was dipping; they might have been making some little hand-cased work, but I hadn't noticed.

X Int. 99. Is it not a fact that some of the finest grades of tobacco made in Virginia has been made by hand-casing for some years past?

A. I've always understood that it's the custom in Virginia in making some grades of fine tobacco.

X Int. 100. Is not this the case, also, in respect to North Carolina?

A. I believe it is.

X Int. 101. Is it not a fact that very many of these manufacturers in Virginia and North Carolina use no finisher in making their tobacco?

A. They would not use a finisher in making twist; but I believe they use finishers in making plug tobacco, which is pressed in a mold.

X Int. 102. Do you state as a fact that this fine grade of tobacco made in plug is not made without a finisher in Virginia and North Carolina?

189 A. I have never personally been in those factories which make a specialty of those fine grades of Virginia tobacco, but believe from what I hear that where they use moulds they also use a finisher to remove the roughness and feather-edges, which would be injurious to the appearance of fine tobacco.

X Int. 103. Then you never heard that any of these manufacturers made their plug tobacco without a finisher?

(Objected to by Mr. Hatch, as calling for hearsay.)

A. I can't remember that I have. I should think, though, as I answered in regard to St. Louis, that some manufacturers making

cheap, rough goods for the negro trade South, where price, not quality, was considered, might pack their tobacco from the molds into the caddy. All that I've heard on the subject of finishers, and seen in Virginia factories, leads me to believe that they generally use finishers.

X Int. 104. For how long a period back will this statement of yours hold good?

A. Finishers were considered a necessary part of the machinery in tobacco factories when I first went into one. They have remained so since, so far as I know.

X Int. 105. Who attended to the hand-casing at Finzer's?

A. I suppose either Mr. Berthold, the foreman, or Mr. Fred. Finzer supervised it.

X Int. 106. What experiments did your brother make in '72 and '73 in order to mark tobacco?

A. I was away at the time, and didn't see the experiments; nor could I state positively the date at which they were made. He tried to impress the trade mark into a brand of plug fine cut that we were then making. It was fine cut wrapped with a leaf, and pressed like plug. The impression didn't remain, and I believe he gave it up as a bad job.

X Int. 107. You know nothing personally about these experiments, do you?

A. No, sir, nothing, except what he told me.

X Int. 108. Do you personally know—and by personally know I mean, did you see any of the experiments which you say P. Lorillard & Co. made in attempting to mark tobacco with an impression?

190 A. I was never in their factory until last year, and, therefore, did not personally see their making these experiments. I saw a lump of tobacco which was said to have been made by them in one of these experiments.

(Last part of the answer objected to by Mr. Boyd, as not being responsive to the question.)

X Int. 109. Do you personally know of any experiment made by the Pioneer Tobacco Co., of Brooklyn, to make an impression on plug tobacco?

A. I know of such experiments from affidavits made by Mr. Hershey, of that company, in a suit at Chicago.

X Int. 110. That's all the personal knowledge you have about it, is it?

A. I think Mr. Hershey told me about it. I may have heard it from other parties, but don't remember.

X Int. 111. Well, you have no other personal knowledge of it than that, have you?

A. No, sir.

X Int. 112. What personal knowledge have you which enabled you to state that Buchanan & Lyall, of New York, had made experiments to this end?

A. None, except that Messrs. Buchanan & Lyall told me so in their office.

X Int. 113. Do you know how Buchanan & Lyall put their mark on?

A. I could not state.

X Int. 114. Didn't they tell you, either Mr. Buchanan or Mr. Lyall, in their office, in New York, that they put their mark on in the molds?

A. I couldn't answer as to how they put it on—don't remember. They mentioned that they tried marking tobacco in the course of conversation on other subjects, but the only thing that impressed itself upon me was the fact that they had attempted it, as I was anxious to lead the conversation back to the object which I had in view in calling on them.

X Int. 115. Will you state that neither of those gentlemen told you how they were putting their mark on their tobacco?

191 A. I think Mr. Buchanan did explain it. But Mr. Scidler, of Lorillard & Co., Messrs. Buchanan & Lyall, and myself, all being present and talking I don't remember. I can't recall just how Mr. Buchanan said they tried it.

X Int. 116. At this interview was there not shown to you, or did you not see, a plug of tobacco marked by Buchanan & Lyall?

A. I think they showed me a plug of tobacco marked as they are in the habit of doing it now—may be several plugs—I don't remember.

X Int. 117. Didn't they tell you how that mark was put on?

A. Yes, sir.

X Int. 118. Didn't they tell you that their mark was put on in the mold?

A. Yes, sir; on the plug made as they are making it now, they put the mark on the mold.

X Int. 119. The purpose of your visit there was because you considered they were infringing upon the patent now in suit, was it not?

A. I was instructed by telegraph, at Philadelphia, that Buchanan & Lyall wanted to confer with John Finzer & Bros., to go and see them, which I did.

X Int. 120. Finzer & Bros. have instituted suit against Buchanan & Lyall for making their tobacco in the way explained to you, have they not?

(Objected to by Mr. Hatch.)

A. A suit has been instigated against Buchanan & Lyall on this patent.

X Int. 121. So far as you know, or have heard, do Buchanan & Lyall mark their tobacco in any other way than was explained to you by them at this interview of which you have spoken?

(Objected to by Mr. Hatch, as immaterial and irrevelant, because the knowledge that this single witness may have cannot account for the motive for bringing the suit against Buchanan & Lyall, and it

does not yet appear that the witness knows the information that the attorneys of John Finzer & Bros. had on which they based that suit.)

192 A. They mark their tobacco principally, so far as I have seen or know, with a round pasteboard tag; the impressions spoken of are thin, dividing lines, to show the retailer where to cut the plug for retail.

X Int. 122. Please look at the exhibit now shown you, and state whether that is the description of marking of which you have been speaking, made by Buchanan & Lyall?

A. I think it is.

X Int. 123. Have you any doubt that this is of the manufacture of Buchanan & Lyall?

A. I have not.

X Int. 124. And that it is substantially the same as that shown to you at this interview?

A. I doubt whether that was made by the same process that was mentioned to me; Buchanan explained to me that the peculiar idea about his present process, for which they have taken out a patent, consisting in tucking in and making the compression in a round roll, and pressed in the mold; that when taken from the mold it shows a wide mark on the edge of the lump growing down to a deep, narrow point, and when the tobacco received a subsequent pressure this aperture was closed up, and, as he said, only showed a sharp line across the face of the plug, as if it had been cut; that when you bent the plug you could see that it was a deep impression as it would widen up; I think he told me also that he formerly put this line on his plugs by the usual method, by lines or wires on division plates in the compress; this plug seems to have been made on the old process, and not on the new, as I don't see the peculiar characteristics which he said it would have.

X Int. 125. Did you examine the plugs shown you at that time to see whether the statement made in regard to the division line was correct?

A. I did not closely, having perfect confidence in anything Mr. Buchanan would say.

X Int. 126. In other respects does this plug, so far as the designating marks are concerned, correspond to those seen by you at this interview?

193 A. The plug shown corresponds with what I have seen of Buchanan & Lyall's goods throughout the country.

X Int. 127. Does it correspond in other respects with the plug shown to you, or seen by you, at this interview?

A. I meant to answer in my former question that it corresponded with that, and in other work of theirs that I have seen throughout the country.

X Int. 128. Looking at this, can you tell what caused the impression, the circular depression, and letters on the back of it?

A. I suppose they were caused by the round pasteboard tag, with the letters "B L" stamped out of it, which are on the other side of the lumps pressed next to it.

X Int. 129. That is, it was done in the caddy, on account of one lump being placed on top of the other.

A. I should think so.

X Int. 130. Are Buchanan & Lyall small manufacturers?

A. No, sir; they are one of the leading manufacturers of the country.

X Int. 131. Was not a portion of the consideration for Lorillard & Co. taking an interest in this patent that you should prosecute all other persons using marks on tobacco?

A. In the license given to Lorillard and Allen & Ellis there is a stipulation that the owners of the patent should take all reasonable means, by suits or otherwise, to stop infringers.

X Int. 132. Was not a portion of the money paid by Lorillard & Co. paid to be used in prosecuting such suits?

A. Yes, sir.

X Int. 133. You made the same offer to Venable & Co., did you not?

A. Yes, sir; they figured with us for a long time over it.

X Int. 134. Do you know whether or not Venable & Co. are marking their tobacco?

A. They are, sir.

X Int. 135. Are Venable & Co. small manufacturers?

A. No, sir; they are also one of the leading manufacturers of the country.

X Int. 136. Do you know whether H. C. Holbrook is marking his tobacco?

191 A. Yes, sir, he is.

X Int. 137. Do you know at what stage of the manufacture he marks it.

A. I do not. I suppose he does it in the finisher.

X Int. 138. You never heard that he marked it in the molds, did you?

A. Don't think I did. I understand he has some patent, or some improvement or other. I never read it or never took any interest in it; believe it did not amount to anything.

X Int. 139. Do you mean that he doesn't make a good impression on his tobacco?

A. Those I have seen lately have been good, although I have never examined it closely.

At this point adjourned to 9:30 to-morrow morning, March 27th, 1879.

J. F. TWOHIG, *Notary.*

9:30 A. M., MARCH 27TH, 1879.

Examination resumed.

X Int. 140. Was not the original "Blackberry" model, of which the one now presented is claimed to be a duplicate, at Louisville, for a long time in the possession of Finzer Bros.?

A. I think it was there. I don't know for how long a time.

X Int. 141. Do you remember when it was there?

A. I do not, sir. I don't know that I ever saw it there. I may have done so, but don't remember.

X Int. 142. In the manufacture of tobacco, is not the tobacco sometimes pressed in the molds, then the plug taken out of the molds, turned, returned to the molds, and again pressed in the molds?

A. Yes, sir; in making black tobacco especially; the wrapper sometimes not coloring sufficiently with the first pressure in the molds.

X Int. 143. Do you say that is the only reason for resorting to this mode?

195 A. No, sir; I think it is frequently used, also, when the molds are old and become sprung from long use.

X Int. 144. Will not this process make the plug more uniform in shape, and better in appearance?

A. It will; if the molds are old and injured by long use; I don't think it is necessary, or an improvement, to work made in new, strong molds.

X Int. 145. Then you say, as a fact, that this process, if used when the molds are new and strong, will not produce a better appearing and more uniform plug?

A. I state that I think it is not necessary, or it is the usual custom to turn tobacco that is in proper order in good, strong molds, and think that the principal reason for which it is done in new, strong molds, is to color the wrapper better, especially in black tobacco.

X Int. 146. Did not Finzer Bros. ever pack any of their tobacco directly from the molds into the caddy?

A. I don't think they did, sir.

X Int. 147. Will you state that they never did?

A. I couldn't swear positively that it was never done in their business; I am almost certain that it was never, though; I know it is not their custom.

X Int. 148. From the commencement of this litigation, has not the entire charge of the matter, on the part of Finzer Bros., been in your hands, excepting, of course, the part taken by counsel?

A. I can't state that it has; I have acted from instructions from them after they have consulted with their attorneys, as Mr. Rudolph Finzer, who has always had special charge of the the outside work, was kept at home when I was traveling; when they wanted anything done about this or other outside business, I was generally requested to attend to it in his absence.

X Int. 149. Who, connected with the house of Finzer Bros. besides yourself, has actively engaged in personally looking up testimony in this matter?

A. No one, sir, in looking up testimony personally; all of them have made numerous suggestions and advice in the matter; any action has generally been taken after full consultation with them.

196 X Int. 150. Has any one connected with Finzer Bros., besides yourself, attended the taking of testimony in the case?

A. No, sir; and I haven't been present at all the testimony.

X Int. 151. At the taking of which testimony have you not been present?

A. I think some testimony was taken in St. Louis, about the 1st of January, at which I was not present. Afterward in St. Louis also they were taking testimony, I think, nearly all week; I was present only one day.

(Defendants' counsel here offers in evidence a plug of tobacco made by Buchanan & Lyall, heretofore shown the witness, marked "Defendants' Exhibit B. & L.")

Re-examination by Mr. Hayes:

R. Int. 1. State, if you please, the circumstances under which you were requested by Finzer & Bros. to attend the taking of certain of the evidence in this case, and at whose request you so attended, and for what reason. State fully.

A. At a consultation in Cincinnati, I think, between Mr. Finzer, my brother, myself, and our attorneys, our counsel said that some one should go to St. Louis and find out the exact truth of the case there in regard to the "Blackberry" mold, and it was suggested that I, being familiar with the trade there, should go. When the evidence was taken in St. Louis, Mr. Hatch requested, as I was familiar with the matter, that I should attend the taking of testimony.

R. Int. 2. State whether or not, if you know, the counsel for Finzer & Bros., at the time this suit was begun, were familiar with the processes in use in tobacco manufacture; and, if not, whether or not any request was made with reference to supplying them with some person whom they could consult from time to time with reference to such technical questions as they might desire information upon.

A. They did not seem familiar, and requested that some one might be placed at their disposal when they deemed it necessary to aid them in this way.

197 R. Int. 3. Was that suggestion acted upon; and, if so, who was designated for that purpose?

A. It was understood that I was to be the one, as Mr. Rudolph Finzer could not leave home.

R. Int. 4. In your cross-examination yesterday you mentioned an interview that you had with Buchanan & Lyall of New York, and certain things that took place at that interview. Please state whether you can fix the exact date at which that interview took place; and, if so, state when it was?

A. December 4th, 1878.

R. Int. 5. How do you fix that date?

A. By a note I took at the time of part of the conversation in my memorandum book.

R. Int. 6. Have you referred to that note?

A. I have.

R. Int. 7. At whose request did you go to see them at that time?

(Objection made by Mr. Boyd to any statement by the witness as to any matters not within his personal knowledge.)

A. At the request of John Finzer & Brothers, Buchanan & Lyall had telegraphed them in regard to a suit that had been instituted against them, under this patent, the one on which this present suit is brought, and they requested me to go to New York, at that time I didn't know on what business. When I got to New York I received a copy of Buchanan & Lyall's telegram, and a request to go and see them.

R. Int. 8. When you went to see them did they state to you the object for which they had sought an interview; and, if they did, what did they state that object was?

A. They did. We were talking about it nearly all evening. They desired to make some amicable arrangement with us, and to get the suit withdrawn.

R. Int. 9. What suit withdrawn?

A. The suit that had been instituted against them under the Miller & Worley patent.

R. Int. 10. Did they explain to you at that time how they were then—that is, December, 1878—marking their tobacco, and under what patent?

198 A. They did—very fully.

R. Int. 11. Who was the patentee of the patent under which they said they were then marking.

A. J. W. DeForrest.

R. Int. 12. I call your attention to the abstract of patent in the Official Gazette of April 9th, 1878, patent No. 202,245, granted David W. DeForrest, Brooklyn, New York, for the manufacture of plug tobacco, and to the first claim of the same, which is for "the process of preparing plugs of tobacco for sale, consisting in first imbedding portions of their wrappers, at intervals, in the faces of the lumps, and then compressing the latter to close up the opening of the imbeddings, and finish said lumps into plugs, substantially as described," and ask you whether or not that was the patent to which they referred you as the one under which they were at that time manufacturing?

A. That is the patent.

R. Int. 13. Do you know when Buchanan & Lyall first began to put tobacco on the market that was marked with a line or impression?

A. Indented lines, showing the retailer where to cut the plug, were first put on the market about the summer of 1877. Buchanan & Lyall were slow to follow this, and [I] don't think their tobacco with indented lines was put on the market until the latter part of '77 or early part of '78.

R. Int. 14. Did Buchanan & Lyall state to you, at that interview in December, 1878, how they put the mark on their tobacco from the time they began in 1877 up to about the time they took out the patent of April 9th, 1878? If so, please state how they said they marked it and how the marks were put on.

A. They did. They said they marked it in the finisher, I think, by the use of wires attached to the tins in the finisher.

R. Int. 15. And at what stage, in reference to the time of pressing the tobacco in the molds?

A. They didn't put it on in the molds at all. After it came from the molds they put it on in the finisher, as described.

R. Int. 16. I call your attention in this connection to the patent granted David W. DeForrest, of Brooklyn, N. Y., January 29,
199 1878, No. 199,624, which in the brief given in the Official Gazette is thus described: "The letters or symbols upon the frame are impressed into the plug by the finisher-plate, and the open parts of the frame permit the tobacco to rise and come in contact with the finisher-plate," and to the sketch with the words "Buchanan & Lyall," and to the claim of the same, as follows: "A skeleton plate or frame, with raised letters or devices thereon, jointly with a finishing-plate, for simultaneously finishing and marking plug tobacco, substantially as herein described," and ask you whether or not that patent was referred to in the conversation, or whether or not you have seen any plug tobacco of Buchanan & Lyall's with the mark impressed thereon shown in the sketch connected with this description, to which you have been referred in the Official Gazette.

A. They showed me the patent. I don't think, however, that they made but little or any tobacco under it. I have never seen any of their goods that had the full name stamped in. They told me that finding we claimed that it was an infringement of the Miller & Worley patent, and not desiring to use other people's property, that they had sought some other means of marking plug tobacco.

R. Int. 17. Do you know whether D. W. DeForrest, the patentee of the patent referred to, was in any way connected with Buchanan & Lyall; and, if so, how?

(Objected to by Mr. Boyd, as immaterial and irrelevant.)

A. He was in their employ, I think, sir, at the time these patents were taken out, probably supervising the work made by his lump-rolling machines, which, I understand, Buchanan & Lyall use.

R. Int. 18. In your cross-examination you have stated that Buchanan mentioned an old experiment that they had made in regard to trying to mark tobacco with an impression prior to the date of the Miller & Worley patent. Did he state whether or not that experiment was successful?

(Objected to by Mr. Boyd, for the reason that the witness nowhere states in his cross-examination any such matter suggested by the question.)

200 A. I understood it was not. They never made but, as near as I can remember, a few lumps, which they placed in the caddy, and never did anything more. I paid very little attention to what he said in regard to it after finding out that it was an abandoned attempt, not regarding it as of any importance.

R. Int. 19. Did you understand from the conversation whether those few lumps that you mentioned retained the impression they received, or whether the impression was not such as to be permanent?

(Same objection as before, by Mr. Boyd, with the further objection that the question is leading, and directly suggesting to the witness the answer sought, and is improper and immaterial in calling for the understanding of the witness.)

A. My impression is that it was not a success, although, as I have stated before, the matter was incidentally mentioned in conversation, and finding it a dead issue, and that it had never been practically carried into execution, it made very little impression on me, except the fact that Buchanan & Lyall, like other parties, had at one time had this idea, and even made some attempt to practically work it out.

R. Int. 20. State what you mean by "this idea."

A. I mean the idea of impressing or stamping a name or mark on plug tobacco.

R. Int. 21. In questions 112 to 114 in cross-examination you speak of this experiment that you say was tried, but you give no date of the experiment. Then, in cross-question 115, you are asked, "Will you state that neither of these gentlemen told you how they were putting their mark on their tobacco?" and you answer that you "Can't recollect just how Mr. Buchanan said they tried it." After that you were referred to a plug of tobacco that was shown you, which you state was made as they are now making their tobacco, and in answer to cross-question 124 you explain how that plug is marked. Now, to what date of manufacture by Buchanan & Lyall does this plug, and the explanation as to how it was made, relate. Is it to the the early experiment that you say they tried, or to the method which they are now using since the DeForrest patent, or to any other period? Please explain, and, in this connection, please read the evidence referred to.

201 (Objected to, by Mr. Boyd, for the reason that the witness states no experiment in his cross-examination as having been described to him by Buchanan & Lyall, as assumed in the question, and for the further reason that the question is leading, and directly suggesting to the witness the answer sought.)

(Question withdrawn.)

R. Int. 22. In questions 113 and 114 in your cross-examination you state you do not remember how Buchanan & Lyall put on the mark there referred to; but in answer to cross-question 124 you explain how they put on their mark. Do you desire to make any explanation as to this apparent contradiction?

A. I do. My answers to questions 112 to 114 referred exclusively to the question as to how they had attempted to put a mark on tobacco in the old experiment which they had incidentally mentioned in the conversation. They explained very fully to me the process under the DeForrest patent for imbedding or tucking in the wrapper on plug tobacco, and our conversation was devoted principally to the discussion of their present system under the DeForrest patent referred to, and therefore impressed itself as a live issue on my mind. My answer to cross-question 124 refers exclusively not

to any old experiment, but to the manner in which they had marked plug tobacco since the introduction of the Miller & Worley process, and to the system under which they are now marking plug tobacco.

ARTHUR L. ROBINSON.

(At this point adjourned to 2.30 p. m.)

J. F. TWOHIG, *Notary.*

Examination resumed 2.30 p. m.

Also, GEORGE H. KNIGHT, a witness, being duly sworn, deposes and says, in answer to interrogatories propounded to him by JOHN E. HAYCH, Esq., as follows, to wit:

Int. 1. State your name, age, residence, and occupation.

A. George H. Knight; my age is fifty-nine years; I reside in Campbell county, Kentucky, and do business in Cincinnati, Ohio; and my occupation is that of a solicitor of patents.

202 Int. 2. How long have you practiced your profession?

A. About thirty-six years.

Int. 3. What experience, if any, have you had during that time in investigating scientific and mechanical questions, and comparing mechanical devices and processes, for the purpose of determining their identity or difference and the principles of their operation?

A. My almost constant daily avocations during that period have been concerned in preparing descriptions and specifications and formulating definitions of various mechanical and scientific apparatus, in order to distinguish them from existing devices of the same kind, both for the purpose of procuring patents, and for defining and comparing such devices with each other, and with claims and specifications of patents in controversies in United States and other courts; as, for example, in the following cases in which, among others, my name as expert appears in the printed reports, to wit: Morris *vs.* Barrett, page 258, volume 1, Bond's Reports, and page 464 1st Fisher; Hays *vs.* Sibsor, pages 284 and 185 1st Bond; Judson *vs.* Moore, page 290 1st Bond, and pages 547 and 556 1st Fisher; Dodge *vs.* Card, pages 396 1st Bond and 118 2d Fisher; Morris *vs.* Royer, page 77 2d Bond; Blanchard *vs.* Putnam, page 93 2d Bond; Smith *vs.* Whisen, page 129 2d Bond. I have been engaged in a similar capacity in many other cases remote and recent, such, for example, as Harris & Harris *vs.* The American Cotton Tie Co. before Justice Billings, of the Louisiana circuit, in June, 1877, and recently in the sixth circuit, Lewis *et al. vs.* Swift's Iron and Steel Works; Geo. Dwight, Jr., *vs.* J. B. Townsend; Hall *vs.* MacNeal & Urban, and Sargent *vs.* Hall's Safe and Lock Co., on an alleged infringement of patent for time locks, a case in which my testimony took several weeks in delivery.

Int. 4. What acquaintance have you with the patents that have been taken out and the processes that are in use in relation to the manufacture of tobacco and analogous manufactures?

A. My duties have brought me a good deal in contact with processes and patents of that kind and kindred kinds.

Int. 5. State what examinations of the recent processes employed in the manufacture of tobacco you have made of late, since
203 you were notified that you would be called in this case, and with special reference to becoming familiar with the methods in use among different manufacturers.

A. I have recently, and for the purpose mentioned in the question, examined the processes followed in the manufacture of plug tobacco, and especially of plug tobacco marked and finished in accordance with the Miller & Worley patent. For that purpose I have visited the factory of John Finzer & Bros., in Louisville, Ky.; of McNamara Bros., of Honnor Hudson, of Lovell & Gedge, of O'Brien Bros., and of Lee & Smith, all of Covington, Ky.; and the factory of Allen & Ellis, on Vine street, Cincinnati.

Int. 6. I now show you the letters patent granted to Anton Miller and Christian Worley, of St. Louis, Mo., assignees of one-half their right to John Finzer & Bros., of Louisville, Ky., for improvement in finishing tobacco plugs, being reissue No. 8060, dated January 29, 1878, the original of which was dated December 5, 1876, and ask you whether you have examined said patent; and, if so, whether you understand the invention therein described and claimed?

A. I have examined, and I believe I understand said patent and the nature of the invention therein described and claimed.

Int. 7. Please describe what you understand the invention covered by that patent to be?

(Objected to by Mr. Boyd, as calling upon the witness for the construction of a written instrument.)

(Counsel for complainants states that he does not ask the witness to construe the patent, and does not expect him to do so, as that is a matter that can only be done by the court. But as he desires that the court may have the benefit of the scientific knowledge of the witness, in comparing the anticipations that have been placed in this case with the invention set forth in the patent, he desires first, as a basis of comparison, to determine and mark out, and in plain, clear terms, what the witness' understanding of the invention is.)

A. I understand the invention to be, as stated in the title, an improvement in finishing tobacco plugs. The specification divides
204 this improvement under two heads, which are the subjects of many separate claims, the first claim being to the process and the second to the product of that process. I understand the process to be essentially that described in the body of the specification, to which the claim exclusively relates, and which is, as I understand it, the described process of manufacturing plug tobacco, which consists, at the instant and by the process of finishing, and by means of plates in the finisher, of impressing the surface of the plug with an indefaceable identifying mark or marks, so that the tobacco takes its permanent set with the impression in it. The second claim, as I have stated, I understand to be to the product of that process; that is to say, a tobacco plug, the final finish and identifying mark of which have been thus produced.

At this point the examination is adjourned to 9:30 o'clock tomorrow morning, March 28th, 1879.

J. F. TWOHIG, *Notary.*

9:30 A. M., MARCH 28TH, 1879.

Examination resumed, as per last-noted adjournment.

Int. 8. State whether or not you have examined the "Exhibit Blackberry Mold Duplicate" and if so, state what the effect would be with reference to securing an indelible identifying mark in plug tobacco, if a set of molds like the exhibit, with the exception that the word "Blackberry" was on each block, were used for pressing tobacco, the tobacco going into the molds in the lump in fair order, and being subjected to the single pressure in the said molds, say of an hour's duration, and with the ordinary amount of pressure, and there being taken from the molds, and either packed directly, or going directly into the finisher, and being put into the caddy, subjected to the usual pressure there, and then going into the caddy, and give your reasons for such opinion as you may express.

A. I have examined the said molds; such use of the molds as expressed would not, in my judgment, secure an indelible identifying mark, whether said plugs were subjected to pressure in the finisher or transferred directly to the caddy; my reasons for
965 this opinion are, that the spongy and elastic condition of plug tobacco at that stage of its manufacture, and its consequent incapacity for retaining a permanent set or impression, would cause such impression to disappear before the tobacco could be placed upon the market.

Int. 9. I now refer you to a certified copy from the files of the Patent Office of the English letters patent granted Wm. Clarke March 26, 1868, No. 761, for improvement in the manufacture of buttons, and ask you to compare the same with the Miller & Worley reissued patent sued on, and state how the manufacture described in each compare or differ, and give your reasons for any opinion that you may express.

A. Speaking broadly, the two are, of course, certain features common to the subject-matter of both the patents cited; that is to say, in both a process is described of producing for the market an object stamped with a permanent impression. They differ, however, in my apprehension, materially, in that the patent of Clarke is for a process of molding and stamping at a single operation a plastic, but non-elastic and homogeneous substance, while the Miller and Worley patent relates to a process for stamping and finishing a previously molded object of laminated structure and necessarily of a spongy and elastic nature, in the process of original molding, and differing from the vitreous and merely plastic material of the button, so as to necessitate consecutive molding operations, with some time and expense intervening between them, and a certain intensity and duration of pressure, wholly unnecessary for the purpose of molding a button. In other words, a knowledge of the art of molding a but-

tion such as described in the Clarke patent would not necessarily convey the needed information of the means of producing a finished and indelibly marked plug of tobacco such as described in the Miller & Worley patent. On the contrary, the description in Clarke's patent would undoubtedly prove wholly inadequate to the production of such a plug. The processes are, in fact, so radically different as to probably necessitate tedious and expensive experimental tests, and the exercise of considerable ingenuity, before a plug, such as called for in the Miller & Worley patent, could be produced. I am confirmed in this view of the difficulty of the mechanical
206 problem solved by Messrs. Miller & Worley by the history of previous efforts to accomplish the results, which efforts (notwithstanding the seeming simplicity of Miller & Worley's finally successful patent) were, so far as I know, wholly unproductive of any results of commercial value.

Int. 10. State what, if any, functions are performed by the marks that are impressed into the plugs of tobacco that are not performed by the marks impressed into the face of the button.

A. The mark on the button is a mere mark, and has no other use or signification. The mark on the plug, in addition to its use for identification, has a valuable mechanical function, in that it operates to compact and knit together the component laminæ at those places which receive the pressure of the mold-projections, and thus prevent a subsequent separation of the layers and the admission of air and moisture.

Int. 11. I now refer you to a certified copy from the files of the Patent Office of the English letters patent granted John Gerard March 17th, 1854, No. 653, for machine for cutting and stamping soap, and ask you to compare the same with the Miller & Worley reissued patent sued on, and state how the process and invention described in each compare or differ, and give your reasons for any opinion that you may express.

A. As before stated, in comparing the subject-matter of the Miller & Worley and the Clarke patents certain similarities exist, in that the machinery of the Gerard patent is intended to produce an article of commerce with the name of the manufacturer stamped upon it. The same differences, however, exists in the case of the Gerard improvement that are cited in the case of the Clarke patent; that is to say, the material operated upon by Gerard is plastic, without being elastic; and the Gerard process differs from the Miller & Worley process in that the stamping and the forming of the cakes of soap are the subject of two distinct operations; in neither the button nor the soap is the material confined or subjected to any pressure during the stamping, as the plug of tobacco necessarily is. Between the processes of Miller & Worley and Gerard the same differences exist that are found in comparing the Miller & Worley with Clarke's; that is to say, from the homogeneousness of the material operated upon by Gerard, it necessarily follows that the
207 impression is a mere mark, having no other use or signification. While, on the other hand, the impression on the Miller & Worley plug possesses the important and valuable property of

knitting the layers more compactly together, and thus of excluding atmospheric influences.

Int. 12. I now refer you to the certified copy from the files of the Patent Office of the letters patent granted to Daniel Eaton April 21st, 1874, No. 150,005, for improvement in plug tobacco, and ask you to compare the same with the Miller & Worley reissued patent sued on, and state how the improvements described in each compare or differ, and give your reasons for any opinion that you may express?

A. I see no similarity in either the process or production of Eaton with those of the Miller & Worley patent. Eaton, it is true, puts on the market a marked plug, but the marking is obviously totally different in character to that employed in the Miller and Worley process, being a mere printed name upon a strip of paper, with which the plug is subsequently wrapped, and to which it is caused to adhere by pressure. The Eaton plug is not finished by Miller & Worley's described process, the letters not being impressed into the substance of the plug at all, but being a mere printed inscription. Were the wrapper removed from the Eaton plug no inscription would be left. It is, in fact, a mere printed wrapper.

Int. 13. I now refer you to the certified copy from the files of the Patent Office of the English letters patent granted to Thomas and George Cope April 29th, 1868, No. 1396, for improvements in machinery for molding, pressing, and stamping Cavendish and other tobacco, and ask you to compare the same with the Miller & Worley reissued patent sued on, and state how the improvements described in each compare or differ, and give your reasons for any opinion that you may express.

A. The patent of Cope, to which my attention is called, appears to be for an apparatus for forming tobacco by a single instantaneous pressure into a soft cake or block for smoking purposes; such a block would certainly be incapable of retaining any mark imprinted upon it, and therefore the expression "various designs and forms of dies," if it means anything at all, can only
208. mean such as to give it an oval or like configuration. No description or representation appears of any lettered or like plates, or dies corresponding to the compress-plates A' of the Miller & Worley patent; no illustrated description of such means, or of any means in fact, such as would be required in a United States patent, and consequently, were the Cope machine capable of producing an article of tobacco, in the compact form, known as a "plug" (which it is not), it would not fill the requirements of a reference for the Miller & Worley claim, because not containing such a description of the essential and necessary compress-plates A' as would be necessary in a United States patent.

Int. 14. I now refer you to the certified copy from the files of the Patent Office of the letters patent granted Charles Siedler January 12, 1875, for improvement in plug tobacco, No. 158,601, and ask you to compare the same with the Miller & Worley reissued patent sued on, and state how the improvements described in each compare

or differ, and give your reasons for any opinion that you may express.

A. I find on examination a description in the said Siedler patent of a plug which is similar to the Miller & Worley plug, in so far that it possesses a permanent mark, but this mark, instead of being only in the substance or material of the plug, is composed of a foreign substance, to wit, a tin metallic tag, which, being inserted between the body of the plug and its wrapper, remains permanently attached. The mark, therefore, consists wholly in such metallic tag, which remains a component part of the object or package as placed on the market, and is immovable except by breaking the wrapper. The device of Siedler requires the somewhat objectionable feature of an appendage of different material to the plug proper. It may be said that, whilst the Miller & Worley plug is composed of two elements, to wit, the filler and wrapper, the Siedler plug is composed of three elements, viz., the filler, wrapper, and the tag. While both devices are for the purposes of identification, the means employed appear to me to be essentially different. The processes also of manufacture of the Miller & Worley plug and of the Siedler plug are radically different. The Miller & Worley plug, having been first wrapped, is formed in the primary
209 mold, is taken therefrom, and is subsequently impressed with a mark by contact with the raised plates in the finisher, which plates are then withdrawn, leaving the impressions in the smooth surface of the finished plug. This process enables many plugs to be simultaneously marked and finished by the plates, of which each plate has as many raised inscriptions as there are plugs in a single stratum or layer in the compress, thus economizing labor and bringing the process within manufacturing facilities. The process employed by Siedler, on the contrary, is markedly different, and there must be of necessity a separate plate or tag for each plug, which must be applied to it before wrapping by tedious hand operation, and this plate is consumed in producing the plugs. While, therefore, a single plate, which can be used over a multitude of times and lasts for years, is employed by Miller & Worley in finishing thousands of plugs, Siedler necessitates a comparatively costly manufacture of the many thousands of metallic tags required to mark as many plugs. Miller & Worley's mode, therefore, while producing a more acceptable plug, does so at a great saving, both in cost of labor and material, over the tag-marked plug of Siedler.

At this point the examination is adjourned till 2:30 o'clock this p. m.

J. F. TWOHIG, *Notary.*

Examination resumed as per last adjournment.

J. F. TWOHIG, *Notary.*

Int. 15. Look at the certified copy of the patent now shown you, being the English letters patent granted J. W. Gibson, J. P. Kennedy, and A. Pryor, the provisional specification of which was dated

April 30, 1874, No. 4516, and the full specification of which was filed October 27th, 1874, which full specification is now shown you, and state whether or not you have examined and understand the said specification and drawings connected therewith and the alleged invention therein described; and, if so, state whether or not you have made any experiments to determine the practical working of
210 the mechanism and process therein described, for the purpose of impressing a mark upon coil tobacco; and, if you have made such experiments, be kind enough to state how the mechanism with which the experiments were made compares with that shown in said drawing and described in the patent, and describe in full the experiments made, and produce the tobacco on which you operated as an exhibit, and state how, in your opinion, the devices and process described in said patent compare with or differ from that described and claimed in the Miller & Worley reissue, on which suit is brought, giving your reasons fully.

A. I have examined, and I believe I understand, the specification and drawings and the alleged invention, so far as it is revealed in the description. I have made experiments to determine the practical working of the mechanism and process therein described upon coil tobacco. For this purpose I employed an apparatus substantially identical with that represented in Figs. 1 and 2 of the said Gibson patent, and described in the specification of the same. In default of any description or representation of the "thin metal plate bearing the manufacturer's abode, trade mark, or mark of quality," I employed for the purpose of marking a number of raised plates struck up by the same dies employed by John Finzer & Bros. in producing their compress plates. A long coil or rope of twisted tobacco was wound around the central sleeve, and name plates, such as I have specified, about eight in number, were then placed upon different parts of the coil, some with the convex and others with the concave sides towards the tobacco disks. Two or three disks of wood and of sheet metal being then alternately interposed, a second coil was then similarly treated, and finally a third; the cap, being then placed in position, was screwed down by the joint efforts of Mr. Bates and myself. Mr. Bates and myself then carefully bound and sealed up the press with the tobacco in it. About three hours thereafter we broke the seals, opened the press, took out the now flattened circular disks of tobacco with the impressions of the name plates deeply and plainly impressed on their surfaces, and placed the said disks of tobacco, without the plates, in a wooden tub, which was deposited in one of the screw-presses employed by John Finzer & Bros. for their caddy work. The head of the tub was
211 under our inspection forced down by one of the operatives, using the ordinary exertion for such work, and the head nailed in place; the tub was then taken out of the press and by Mr. Bates, myself, carefully bound and sealed up. This tub, thus secured, was expressed, addressed to Knight Bros., Cincinnati, and on the 21st inst., the seals being intact, the tub was by Mr. Bates and myself opened, and the disks of tobacco taken out. These disks I now produce. We found the disks substantially in the condition

now presented by them, possibly with their marks a little more legible—but certainly not sufficiently conspicuous to serve the purpose of a commercial mark, only a few on each disk being visible, without close inspection, and those not of such legibility as to be of any commercial value. The pressing of the above was done in John Finzer & Bros.' factory about noon of Wednesday, the 12th inst., and the packing in the tub on the afternoon of the same day and in the same place. The tub was opened, as above stated, on Friday, the 21st inst., with the results which appear in the disks now presented. In order to assure ourselves of the pressure employed we noted the following dimensions: The press which received the coils, as above, had a circular transverse section, 12 inches in diameter, diminished by a 1½ central orifice, leaving about 141 circular inches—say 110 square inches of effective surface; the lever employed was 34 inches, giving 214.2 inches sweep; the threads of the screw were 6 to the inch (¼ inch pitch), making an effective purchase of 1285.2, which, divided by the effective pressing surface, about gives 11.6 effective purchase per square inch. This lever was operated by Mr. Bates and myself jointly, and a test of our united strength, with a dynamometer, showing about 200 pounds, it follows that the pressure produced by our joint efforts was about 2320 pounds per square inch. The caddy pressure was obtained by a sweep of 45.36 inches, and the pitch of screw being .625, gave an effective purchase of 725.7, which, divided by 112 square inches of disk surface, gave an effective purchase per square inch of 6.5; this, multiplied by 100, the estimated force in pounds applied by the workmen, gave 650 pounds pressure per square inch in the caddy-press, being about one-fourth that applied in the original impression.

The said device of Gibson, Kennedy & Pryor differs radically, in my opinion, from that described and claimed in the said Miller
212 & Worley reissue, first, in the absence of any specific and definite drawing or description of the name-plates; second, in the absence of consecutive molding, finishing, and stamping operations of the disks of tobacco now produced in evidence. One of these disks has been in my keeping ever since, and untouched by myself or any body else.

(The three disks of tobacco referred to by the witness, are introduced in evidence, and are marked "Gibson & Kennedy Coiled Tobacco.")

Int. 16. At the time this drum of tobacco was opened, on the 21st inst., state whether or not the mark upon it, of the word "Finzer," applied in the manufacture, as heretofore described, was sufficiently legible—so that a person would notice it, who was not expressly looking for it?

A. Such a person would not notice it.

Cross-examination by S. S. Boyd, Esq.

X Int. 1. You have described all the experiments made under the Gibson Patent, and your description sets forth, specifically, each step of such experiment?

A. Yes, sir, to the best of my recollection.

X Int. 2. In what did you press the tobacco prior to the putting it in the drum?

A. We pressed it, as stated in my answer to the question in chief, in an iron compress, substantially identical with that shown in Figs. 1 and 2, and described in the specification of the Gibson patent.

X Int. 3. Do you mean that it was a compress made especially for the purpose?

A. I have no knowledge of the purpose for which it was made.

X Int. 4. Can you not tell whether it was such a compress as was in common use at Finzer's factory?

A. It was unlike any of those that I saw in use there.

213 Re-examination by Mr. Huxon:

R. Int. 1. State whether or not you compared their device or compress, in which the pressing was done, minutely with Figs. 1 and 2 of the Gibson patent, to observe whether the same was identical.

A. I did.

R. Int. 2. State whether or not the various parts were upon the scale shown in the drawing of the patent, Figs. 1 and 2.

A. Yes, the parts appeared to me to have, upon comparison, the same relative proportions as shown in the drawing.

R. Int. 3. State whether or not, while you were at Finzer & Bros., you examined the hydraulics that were in operation to determine the amount of pressure per square inch applied to tobacco when pressing in the molds; and, if so, what was that pressure?

A. I did, but did not note the figures down at the time; my recollection is, that the pressure per square inch applied was something over 1,000 pounds in the original mold, and about 2,000 pounds, or nearly so, in the finishing compress. Since then I have examined the pressures in the factories cited in my previous testimony, and find them very variable in different factories, and in the same factories at different times—all of them, however, falling short by more than 1,000 pounds per square inch of the pressure employed by John Finzer & Bros.

GEO. H. KNIGHT.

At this point examination is adjourned till 9:30 to-morrow morning, March 29th, 1879.

J. F. TWOHIG, *Notary.*

Examination resumed 9:30 a. m., Saturday, March 29th, 1879.

J. F. TWOHIG, *Notary.*

Also, WILLIAM S. BATES, a witness produced on behalf of complainants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by JOHN E. HUXON, as follows, to wit:

214 Int. 1. State your name, residence, and occupation.

A. My name is William S. Bates; I reside in Cincinnati, Ohio, and I am by profession a solicitor of patents.

Int. 2. What opportunities have you had for becoming acquainted with the theory and practice of mechanics and the mechanic arts, and whether you have any knowledge of plug tobacco manufacture?

A. For about twelve years past I have devoted my attention almost entirely to the theory and practice of mechanics. I have taken an engineer's degree at the Rensselaer Polytechnic Institute, of Troy, New York, after four years' course of study; after which I spent two years in Europe in the study of mechanics and engineering. Upon my return to this country I entered the employ of the late Hon. S. S. Fisher, ex-commissioner of patents. While with him it was my duty to prepare applications for letters patent for various mechanical devices, and to examine all kinds of machinery and drawings and written descriptions of machinery, and to compare the same with each other, and to explain the construction and operation of the same for the purpose of determining questions of novelty and infringement. Since the death of Mr. Fisher I have been engaged in the same manner, with the addition that I have several times been called upon to do my work under oath as a mechanical expert in patent cases. I have recently had occasion to make some study of tobacco manufacture, and have thoroughly examined the manufacture of plug tobacco, and believe I am familiar with it.

Int. 3. State whether or not you have examined the "Exhibit Blackberry Mold Duplicate;" and, if so, state what the effect would be with reference to securing an indelicable identifying mark in plug tobacco, if a set of molds like the exhibit, with the exception that the word "Blackberry" was on each block, were used for pressing tobacco, the tobacco going into the molds in the lump, in fair order, and being subjected to the single pressure in the said molds, say of an hour's duration, with the ordinary amount of pressure, and then being taken from the molds, and either packed directly into the caddy, or going directly into the finisher and being subjected to the usual pressure there, and then going into the caddy, and give your reasons for such opinions as you may express.

215 A. I have examined the exhibit referred to. If tobacco were treated as stated in the question, that is to say, was put into the mold in the lump, in fair order, and there subjected to a single pressure of the ordinary degree, for about an hour, it would undoubtedly come out of the mold with a good impression of the word "Blackberry" on it, but this impression would be very soon effaced. Tobacco in the form in which it goes into the mold is a porous and very elastic mass; the pressure in the mold reduces its porosity, making it much more compact; but this pressing is not sufficient to give it a permanent set. It is well known in physics that a body in the condition of the tobacco lump, if put into a press, and subjected to a certain pressure, and allowed to stand for some time, can be still further compressed by the same force. The reason for this is that, when first subjected to pressure, the pressure is re-

sisted by the entire mass, but, after standing for some time under pressure, the molecules arrange themselves in conformity to the new conditions so as to exert less resistance, and the pressure will be found to be much less than when first applied. If, however, the pressure be relieved soon after its first application, the mass will swell up again almost immediately. Another cause is, that the porous mass of tobacco that goes into the mould is contains a large amount of air between its particles, and this air is forced out by the pressure, the particles being brought largely into contact, or the interstices filled with the gum and sweetened in the mass, which has a combined effect of gluing them together and of causing them to adhere by the pressure of the outer atmosphere. But, when the pressure on the mass is relieved, the mass will swell up again, owing to its natural elasticity, and the effect of this swelling would be to obliterate any marks that may have been made upon it whilst under pressure, and the mass will, in time, assume very nearly its former shapeless condition. Now, if the tobacco coming from the mold, with the Blackberry impression on it, were allowed to stand, the mark would be totally obliterated. If the tobacco were packed directly into the caddy from the mold, the pressure of packing would aid the causes already mentioned, in obliterating the mark. If passed first through the finisher, and then packed in the caddy, there would be two pressures, instead of one, to aid in this obliter-
216 ation. I am, therefore, of the opinion that it would be impossible to secure an ineffaceable mark in plug tobacco, in the manner described in the question.

Int. 4. Please look at the letters patent now shown you, being the reissued letters patent granted Anton Miller and Christian Worley, of St. Louis, Mo., assignors of one-half their right to John Finzer & Bros., of Louisville, Ky., for improvement in finishing tobacco plugs, dated January 29th, 1878, No. 8060, being a reissue of the letters patent No. 185,119, dated December 5th, 1876, and state whether or not you have examined the same and understand the invention therein described and claimed; and, if yea, please institute a comparison between the invention therein described and claimed, and the processes and mechanism and product shown in the following letters patent:

1st. English letters patent granted William Clarke, dated March 2d, 1865, No. 591, for improvement in the manufacture of buttons.

2d. English letters patent granted John Gerard March 17th, 1854, No. 635, for machinery for cutting and stamping soap.

3d. Letters patent granted Edward E. Eaton, dated April 21st, 1874, No. 150,008, for improvement in plug tobacco.

4th. English letters patent granted Thomas and George Cope April 29th, 1868, No. 1396, for improvement in machinery for molding, pressing, and stamping Cavendish and other tobacco.

5th. Letters patent granted Charles Stoller, dated January 12th, 1875, No. 158,904, for improvement in plug tobacco; and state how the method of manufacture and the product shown in the said several last-named patents, considered separately and collectively, compare with or differ from the invention shown and claimed in

the said Miller & Worley patent, and give your reasons fully for any opinion you may express.

A. I have examined, and believe I understand the various patents mentioned in the question. In order that the comparison which I am asked to institute may be intelligible, I will first explain my understanding of the invention in the Miller & Morley reissue, No. 8060. I understand this invention to be, as stated in the title, an improvement in finishing tobacco plugs, and to consist in a pro-
217 cess for marking tobacco plugs with an ineffaceable identifying impression, at the same time and by the same pressure that the finishing is done by, so that the plugs take their permanent set with the impression in them. I have already explained in my last answer that a permanent impression could not be produced prior to the finishing pressure, it being understood, of course, that the finishing pressure is the one which gives its permanent set to the plug. As the plug comes out of the molds it is still in a soft, elastic condition, which would cause it to swell, as already explained. But if it be placed between dry plates when it comes from the mold and before it has time to swell, and subjected to another pressure, it will receive a permanent set, due to a variety of causes, among which may be mentioned the rearrangement of the molecules of the mass, the further compression of the mass bringing the particles closer together, driving out any remnant of air, and causing the gum and sweetening to effectually glue the particles together, and the removal of expressed moisture by changing the tobacco from the molds to dry plates, so that the whole mass is effectually solidified. It is a familiar fact in mechanics that a succession of pressures have a much greater effect in solidifying a porous or elastic mass than a single pressure of greater intensity, or of a greater duration, as is exemplified in pressing snow into a snow-ball: at a certain stage the snow is very elastic, and if it be squeezed too hard the ball will break; but if it be squeezed lightly, and receive a number of successive pressures, the ball will be permanently set into a solid mass. If, now, in the case of tobacco, marking devices be applied by this finishing pressure, the plug will be solidified, or, as the patent expresses it, "take their permanent set" with the impression in them, whereby said impression is preserved ineffaceable. In addition to this, the making of an impression in such a material as tobacco makes the finishing process more effective, and this in two ways:

First. On account of the greater pressure at the points of application of the impression giving greater solidity at those points; and,

Second. Thereby causing an interlocking of the particles of the different layers, thus binding said layers or laminæ firmly together.

The object of such a mark in the tobacco plug, in addition to the mechanical function which I have just mentioned, and which
218 depends for its permanence and consequent usefulness on the ineffaceableness of said mark, is to identify the goods, so that a dealer purchasing such goods for retail is unable to substitute inferior goods for them, thus deceiving the consumer and causing a loss of trade to the manufacturer. With this explanation, I will proceed to the comparison required by the question, and in making this

comparison I will take up the various patents in the order in which they are mentioned in the question.

First. The Clarke English patent.

This patent is for an improvement in the manufacture of buttons, and is described as relating to the manufacture of buttons, of glass, or other similar material which is fusible, or capable of being softened by heat, or of a plastic material, such as cement, or paste, or clay, and consists more particularly in attaching the shank to the button by a flexible fastening, to prevent the breaking of the button, which is of a brittle substance. In doing this, the patent states that the material is first softened. In the case of glass, this is done by heat; and while in this soft or plastic condition it may be "stamped with any suitable pattern." This is the only reference in the patent to any stamping or marking with an impression. This is the ordinary molding process of forming articles of metals or of sealing wax, and I am of the opinion that this is entirely different from the Miller & Worley invention, for the reason that said Clarke patent does not describe or show, or even hint at, a process of marking a plug of tobacco, or any similar material, with an ineffaceable identifying impression at the same time and by the same pressure that the finishing is done by, or at any other stage of its manufacture, the materials of which the button is made being entirely different in their properties from tobacco; and even if they were the same, which they are not, this Clarke patent would not contain the Miller & Worley invention for the reason above given, and for the further reason that it would be impossible to mark a plug of tobacco by any method by which the materials described in the Clarke patent could be marked, owing to the difference in the properties and composition; and if it were attempted, the only result would be to render the tobacco utterly worthless, and it would be impossible

219 to produce a mark on glass, or other silicious or bituminous matter, or ceramic substance, as cement, mastic, or paste, by the process described in the Miller & Worley reissue, and the only result of attempting to do this would be to destroy the substance operated on.

Adjourned until 2:30 o'clock this p. m.

J. F. TWOHIG, *Notary.*

Examination resumed, and witness continues:

Second. The English patent granted John Gerard. This patent is for machinery for cutting and stamping soap. Soap is ordinarily made in a large block, and this block divided into cakes by cutting. The Gerard patent describes machinery for cutting a block of soap into slabs in one operation, and dividing these slabs into bars or cakes by another operation. This is done as follows: A large block of soap, placed on a suitable table, a frame, like a picture or slate frame, for example, but having wires or blades stretched across it from side to side, is then moved by suitable mechanism in such manner as to draw the wires or blades through the block from side to side, thus dividing the block into horizontal layers or slabs, as the patent calls them. Another similar frame, having a similar

series of wires or blades stretched across it, is then caused to move downward so as to draw the wires vertically through the mass of soap, thus dividing the slabs into bars. Another frame is then brought down over the mass, and cuts it in another direction, dividing the bars into cakes, which are then ready for marking. This stamping is done by a device described in the patent as consisting of "a frame containing the required number of dies to stamp or mark all the bars or cakes in one slab at one operation." Further on in the patent I find the following:

"*q* is the stamper suspended by the pulleys *r r* to the frame *a a* by the cords *s s*, by which the stamper is raised and lowered, and stamps the whole of the bars or cakes in one slab or lift at once. The frame which carries the stamper is fixed to the uprights and main frame."

220 This is the only matter I find in this Gerard patent which is in any sense descriptive of the operation of stamping or marking. The figure of the drawing showing the stamping frame and dies does not show any devices for making the mark, and but for the word "die" in the patent it would be impossible to tell but what the stamping or marking was done with ink, or other coloring matter, after the manner of printing. Aside from this, the inference is that the marking frame descends and marks the soap by its weight. This Gerard patent can in no sense be said to describe or show the invention set forth in the Miller & Worley reissue, for the reasons that it does not describe any process of marking tobacco plugs, or other similar substance, with an impression at the same time and by the same pressure that the finishing is done, or at any other stage of their manufacture; neither does it describe, nor show, nor hint at a tobacco plug, or a plug of any material marked with an indelible mark by such a process, nor a tobacco plug, or plug of similar material marked with an impression by any process whatever.

Assuming this Gerard patent to describe a method of marking soap with an impression by means of dies, I am still of the opinion that it would not contain the Miller & Worley invention, for the reasons that it would not then describe a process of marking a substance with an impression at the same time and by the same pressure that the finishing is done. Neither would it describe any process by which a plug of tobacco could be marked. Nor would it describe a plug of tobacco marked with an indelible impression, or an impression of any kind. Soap and tobacco being entirely different in their properties and constitution, it would be impossible to mark a plug of tobacco with an indelible impression by any process that is suitable for soap. Nor would it be practical to mark soap by the process of the Miller & Worley reissue.

In addition to these reasons, a mark in the soap does not subserve the mechanical uses of the mark in the tobacco plug. Soap does not require pressure to solidify it, as the tobacco plug does; neither is it composed of laminæ, as a tobacco plug is, and which are bound together by the mark in the tobacco plug.

221 Third. Letters patent granted Edward E. Eaton,

This patent is for an improvement in plug tobacco, which improvement, as stated in the patent, "consists in the substitution of a paper wrapper in place of the tobacco wrapper." The patent further states what is undoubtedly true, that, "in the manufacture of plug and twist tobacco, the wrapper is used merely to give a good color and appearance to the tobacco, as it is worthless for chewing, as it has not undergone the proper preparation therefor, but though of no value for chewing, being bitter and unpalatable, it is of high-priced tobacco, as it is necessary that it should be unbroken, and the color should be good."

To do away with the necessity of "this expensive wrapper" is the object of the Eaton invention, and this is done by substituting thin paper for the tobacco wrapper; this paper wrapper is put on, of course, before the plug is formed, and the pressure used in forming the plug incorporates the paper wrapper with the tobacco filler in the same manner that it would a tobacco wrapper. As a further advantage the inventor states that the Government stamp may be on this paper wrapper, and he shows, in Fig. 1 of his drawing, a trade mark and label, printed on his paper wrapper.

This patent makes no mention of the process of marking a plug, either in the preliminary or finishing process. Neither does it describe the process of marking a tobacco plug with an impression during the finishing process, or at any other time. Neither does it describe a plug of tobacco marked with an indefaceable impression by such process, or otherwise; and it cannot, therefore, be said to, in any sense, describe or show the Miller & Worley invention. On the contrary, the treatment of the Eaton plug and wrapper, by the Miller and Worley process, thus producing a Miller & Worley plug, with its impression, would be a great improvement to the Eaton plug, for the very obvious reason that the Eaton wrapper would thereby be more thoroughly incorporated with its filler.

The printed mark on the Eaton wrapper is in no sense of the word an impression produced at the same time and by the same pressure that finishes the plug, as it is not an impression at all, but is printed on the wrapper before it is used. Neither does this mark subserve the mechanical uses of the Miller & Worley impression.

I am, therefore, of the opinion that the Eaton patent neither
222 describes nor shows the process or product of the Miller & Worley reissue.

Fourth. The English patent granted T. & G. Cope.

This patent is stated in its title to be for mechanism for molding, pressing, and stamping tobacco. It consists, essentially, of a revolving table superposed on a stationary table, the revolving table having die-holes in it; a suitable arranged cam causes a plunger to descend into one of the die-holes at a proper point in the revolution of the table, a thrust-plate, as it is called, at the same time punching out the contents of the die-holes which was previously under the operation of the plunger. The operation of this device is as follows: The tobacco to be pressed is placed in the die-hole by the operator. This tobacco, as is stated in the patent, and as is evident from the

drawing, is generally cut for shag tobacco. A thin metal plate is then placed over this tobacco for the purpose, as the patent states, of keeping the tobacco in position until the plunger comes down upon it, that is, to keep the long strings composing shag tobacco from protruding over the edge of the die-hole and being wasted and clogging the machinery.

At this point the examination is adjourned till 9:30 o'clock Monday morning, March 31st, 1879.

J. F. TWOHIG, *Notary.*

9:30 A. M., MARCH 31st, 1879.

Examination resumed as per last adjournment.

J. F. TWOHIG, *Notary.*

Witness resumes:

The table is then revolved until the die-hole is brought under the plunger. The plunger then descends and compresses the tobacco to a thin cake, as shown in Fig. 2 of the drawing. The tobacco is under pressure for "two seconds," the patent states. I understand this patent to refer rather to a means of packing tobacco, than anything else, for the reason that it would be impossible to make a "plug" of tobacco by such a method, for reasons explained in my last answer, and also because the patent states that it is designed for "shag" tobacco, which is tobacco cut in long, coarse strings for smoking, no reference whatever being made to plug tobacco, except by the single word "Cavendish," and that may with equal force be held to mean "cut Cavendish," which is a stringy, sweet tobacco used for smoking. This patent cannot be said to contain the Miller & Worley invention, for the reason that it does not describe a process of marking tobacco with an ineffaceable impression during the finishing, so that the tobacco takes its permanent set with an impression in it; neither does it show nor describe a plug of tobacco having an impression in it produced by such a process, or by any process whatever. It does not even describe a process by which an ineffaceable impression could be made in tobacco. I have already explained that a succession of pressures is essential to the Miller & Worley process. The Cope patent, on the contrary, states that the invention described in it is designed to do away with more than one pressure.

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Fifth. Patent to Chas. Sieller.

This patent describes a method of attaching a metal label to a plug of tobacco as follows: The thin metal label, having the proper inscription on it, and having projecting points on its back, is sunk into the tobacco, the points projecting deeply into the plug and holding it in place; the wrapper is then put on over the label, and thus effectually prevents its coming off.

This patent does not describe a process of marking a plug of tobacco with an ineffaceable impression during the finishing or at any other stage of its manufacture. Neither does it describe or show a plug of tobacco marked with an ineffaceable impression by such a

process or otherwise; on the contrary, it shows and describes a plug of tobacco having a metallic label attached to it by a peculiar method, which label would be a very unpleasant thing to bite against. This label is incapable of performing the mechanical function of the Miller & Worley impression, as the interposition of a foreign body would have rather the effect of separating the laminæ than of binding them together. I am, therefore, of the opinion that this Siedler patent does not contain the Miller & Worley invention, the Miller & Worley process being designed and adapted to obviate the very thing which the Siedler patent describes.

As to these various patents taken collectively, it will suffice
224 to say that, as no one of them describes or shows any part of the Miller & Worley process or product, they cannot collectively describe the whole of said process or product, and that, in my opinion, the Miller & Worley process and its product are radically different from anything contained in these patents, whether considered separately or collectively.

Int. 5. Look at the certified copy of the patent now shown you, being the English letters patent granted J. W. Gibson, J. P. Kennedy, and A. Prior, the provisional specification of which was dated April 30th, 1874, No. 1516, and the full specification of which was filed October 27th, 1874, which full specification is now shown you, and state whether or not you have examined and understand the said specifications and drawings connected therewith, and the alleged invention therein described; and, if so, state whether or not you have made any experiments to determine the practical working of the mechanism and process therein described, for the purpose of impressing a mark upon coil tobacco; and, if you have made such experiments, be kind enough to state how the mechanism with which the experiments were made compares with that shown in said drawing, and describe in full the experiments made, and produce the tobacco on which you operated as an exhibit, and state how, in your opinion, the devices and process described in said patent compare with or differ from that described and claimed in the Miller & Worley reissue, on which suit is brought, giving your reasons fully.

A. I have examined, and believe I understand, the patent referred to. This patent, as stated in its title, refers to improvements in the manufacture of tobacco and oil, and describes a small screw-press for use for such purpose. The press consists of a cylinder fitted on to a suitable base—the cylinder being divided longitudinally into two parts bolted together; through the middle of the base a screw-bolt is passed, by means of which and a nut the follower is forced down upon the material in the cylinder, and compressed between the base and the follower. A sleeve or sheath is placed around the bolt to prevent the material from coming into contact with the bolt. The method of using this press in the manufacture of tobacco, according to the patent, is as follows: A long roll
225 or rope of tobacco is coiled in a flat coil about the sleeve, as a center; a wooden disk is placed over it, a metal disk over that, then another wooden disk, then a coil of tobacco to the desired

amount. The whole is then placed within the cylinder, and compressed. The patent also states that, between the wooden disk and coil, at a "convenient place on the surface of the coil, a thin metal plate, bearing the manufacturer's name, abode, trade-mark, or mark of quality," may be placed for the marking of the tobacco, with the name or mark from such plates. The patent does not describe or show these marking plates, or tell how they are to be made. About two weeks ago, in conjunction with Mr. Geo. H. Knight, of this city, I made an experiment to determine whether tobacco could be marked with an ineffaceable mark by such a method and machine. For this purpose I took a press constructed in accordance with the description and Figs. 1, 2, and 5 of the drawing of this Kennedy patent, the press measuring twelve inches across the face of the follower and base, that is, the cylinder being twelve inches in internal diameter, the sleeve being 13 inches in diameter, and the screw-bolt 1¾ inches. I then took some coil tobacco in the form of a rope, and in proper order for this purpose, and made it into a flat coil about the sleeve, placing a thin wooden disk on each side of the coil. I then put on an iron disk, and then another coil of tobacco between two wooden disks, and so on, having in all three coils of tobacco, each coil being between two wooden disks, as described in the patent. For the purpose of making a mark on the tobacco I took a number of name plates, cut from the finisher plates employed by John Finzer & Bros. for marking tobacco by the Miller & Worley process, these name plates having the name of Finzer on them struck up with a die, and placed about eight or ten of them on each coil of tobacco, between the tobacco and the wooden disk, some being placed so as to produce a raised mark, and others so as to produce an impressed or intaglio mark. I then put the follower in position, and screwed down the nut with a wrench, the wrench having a leverage of 34 inches. Mr. Knight and myself exerted our whole strength in screwing down the nut and compressing the tobacco. We have since measured our strength with a dynamometer, and found that the force we exerted was about
226 200 pounds. As the screw-bolt had six threads to the inch, and the force of 200 pounds was exerted at the end of a 34-inch lever, the total pressure exerted on the tobacco was 256,354.56 pounds, the effective area of the base and follower was 110.685 square inches, so that we had a pressure on the tobacco of 2,316.07 pounds per square inch. This experiment was made on the 12th day of the present month, and we left the tobacco under the above pressure for 32 hours. At the end of that time we took the tobacco from the press, removed the name-plate, and found it clearly and distinctly marked with the word "Finzer" wherever a name-plate had been placed. We then packed it in a drum, using for this purpose the ordinary pressure used in packing plug tobacco in the caddy, and sealed it up. Nine days later, that is, on the 21st of this month, we opened the drum and took out the tobacco. The marks were all so nearly effaced as to be illegible, and it was only by carefully examining the tobacco that it could be seen that there ever had been a mark. This is the tobacco marked "Complainants'

Exhibit Gibson & Kennedy Coiled Tobacco, J. F. Twohig, Notary."

This Gibson & Kennedy patent cannot be said to contain the Miller & Worley invention, for the reason that it does not describe a method of marking plug tobacco with an ineffaceable impression during the finishing process, nor does it describe or show a plug of tobacco marked with an ineffaceable impression by such process, or in any other manner. And though it suggests marking tobacco with a name, it does not describe any process by which it can be done, and I am fortified in this opinion by the experiment which I have described above. For these reasons I am clearly of the opinion that the Miller & Worley process and product are entirely distinct from anything contained in the Gibson & Kennedy patent.

Int. 6. Supposing that it was possible to make a mark by the method described in the Gibson & Kennedy patent, state how the cost of fitting up an establishment with the devices shown in that patent would compare with fitting up the devices described in the Miller & Worley patent.

(Objected to by Mr. Boyd, for the reason that it does not
227 appear that the witness has any knowledge of the cost of putting up either device, and no experience whatever in relation thereto.)

(Counsel for complainants says that he does not call for exact figures on this matter, but, if there is a difference in the mind of the witness, for the reasons why one would be more expensive than the other.)

A. Assuming the question to ask for a comparison between the cost of the Gibson & Kennedy method, and the process of making plug tobacco, to the finishing stage of which the Miller & Worley invention relates, I should think that the Gibson & Kennedy method would be very much more expensive, and this because of the very much larger number of presses required. The Gibson & Kennedy presses are small hand presses, and in order to turn out the same amount of work with them, it would require an immensely greater number of them, than of the hydraulic presses used by Miller & Worley, and to operate this greater number would require a very much larger number of workmen, and as all these small presses occupy space, the Gibson & Kennedy would require a much larger factory. I should think that the cost would be as three or four to one in favor of Miller & Worley, if not greater, and this, assuming that no greater time was required for the manufacture under the Gibson & Kennedy. I have already explained in a previous answer that an attempt to make a plug of tobacco by a single pressure would necessarily require that pressure to be exerted during a much longer time, and even then will not produce as perfect an article.

Int. 7. What difficulty, if any, would there be in using this device on plug tobacco, arising from the shape of the device and the manner in which the power is applied for pressure?

A. It would be impossible to make a plug of tobacco with clean edges in such a press as is shown in the Gibson & Kennedy draw-

ings, for the reason that whatever the shape of the plugs were there would be spaces left between them and the sides of the cylinder and the central sleeve, and in pressing plugs the great pressure used causes the material to flow, so to speak, and enter into any spaces that might be left unoccupied, and in case of an attempt to make a plug by a single application of pressure, the material would
227½ have feather edges or fins formed on it, and in a press like the Gibson & Kennedy would be very uneven, owing to the impossibility of making the plugs fit the press, and if they were kept under pressure long enough it would ordinarily be impossible to get them out of the press without breaking, owing to the feather edges, etc.

Adjourned till 2:30 p. m. this day.

J. F. TWOHIG, *Notary.*

Examination resumed, 2:30 p. m., March 31st, 1879.

Cross-examination by Mr. Boyle:

X Int. 1. Have you described specifically every step taken by you in making your experiment under the Gibson & Kennedy patent, and described everything done by you during said experiment?

A. I believe I have.

X Int. 2. In describing that experiment, you say "I took some coiled tobacco in proper order for this purpose." How do you know the tobacco was in proper order?

A. It was in about the same order that tobacco is usually in before going into the molds for making plug tobacco. It may have been a little dryer.

X Int. 3. Does your experience in the manufacture of tobacco qualify you to state from inspection whether tobacco is in proper order for pressing?

A. I know the nature of the material, and how such material would behave under pressure, and could, therefore, tell about what was right.

X Int. 4. Then the nature of the material is such that its behavior under pressure will depend very largely upon its order or condition?

A. Yes; if it is too wet, for example, it will be impossible to form it, and if it were too dry it would not solidify.

228 X Int. 5. Your experience in pressing tobacco is confined to these experiments concerning which you have testified?

A. To them and to a careful examination that I made of the process of manufacture practiced by John Finzer & Brothers, of Louisville.

X Int. 6. For how long a period of time did this examination continue?

A. For the best part of a day.

X Int. 7. Why did not the impression remain in the tobacco made, as you say, under the Gibson & Kennedy patent?

A. Because, from the nature of the material, after it was relieved from pressure it swelled, and this swelling, together with the packing pressure, obliterated the marks. It had not taken its permanent set.

X Int. 8. Why had it not taken its permanent set?

A. Because it had not first received a molding pressure. If the tobacco had been first molded under pressure, and then pressed again, it would have taken its permanent set under this second pressure.

X Int. 9. Then you think the reason that this tobacco swelled up was because it had been subjected to but a single pressure?

A. Yes, chiefly that.

X Int. 10. In your opinion is it essential that this second pressure should be given to tobacco in an apparatus separate and distinct from that in which it receives its first pressure?

A. Not necessary, but it is very much better that it should be in a separate apparatus.

X Int. 11. Is it essential to produce this set that the tobacco shall be relieved from its first pressure before being subjected to the second pressure?

A. Practically it is, as otherwise it would require too long a time, which would necessitate a much larger amount of machinery.

X Int. 12. That is, you use the word "practically" in the sense of economical, do you not?

A. Not entirely. If the first pressure were not relieved before applying the second, it would be impossible to trim off feather-
229 edges, etc., from the plugs, thus getting them into salable shape, it would be impossible to move them from the old molds, and, consequently, they would have rough surfaces, and though I believe the tobacco would set in time under a steady pressure, it would require a very long time, which would require a much larger amount of machinery than would be otherwise necessary to do a given amount of work; and if the tobacco were allowed to harden in the molds, it would be so stuck to them as to be, to a large extent, broken in getting it out. In addition to this, a single pressure of any reasonable amount, irrespective of duration, would not solidify the plugs to the same extent as two or more successive pressures.

X Int. 13. Did you ever make an experiment to see how long it would take to produce a permanent set in tobacco, using but a single pressure?

A. No, sir.

X Int. 14. Then, so far as your experience goes, based upon practical experiment, there is nothing in the nature of tobacco which will prevent it from taking a permanent set from a single pressure?

A. My knowledge of physical laws enables me to determine such a question without first trying it. I have already stated that I thought the tobacco would take a permanent set if kept a sufficiently long time under pressure.

X Int. 15. What is your age, Mr. Bates?

A. Twenty-seven years.

WM. S. BATES.

Sworn to before me on the 29th of March, and subscribed in my presence, this 31st day of March, A. D. 1879.

J. F. TWOHIG, *Notary.*

Adjourned till 9:30 a. m., Tuesday, April 1st, 1879.

J. F. TWOHIG, *Notary.*

9:30 A. M., APRIL, 1879.

Examination resumed.

Also, WILLIAM LORAM, a witness produced on behalf of complainants, being first duly cautioned and sworn, deposes and says,
230 in answer to interrogatories propounded to him by JOHN E. HATCH, Esq., of counsel for complainants, as follows, to wit:

Int. 1. State your name, age, residence, and occupation.

A. My name is William Loram; am forty-four years of age; reside in Petersburg, Virginia; and am by occupation a manufacturer of tobacco.

Int. 2. How long have you been in that business?

A. Since 1853.

Int. 3. State whether or not you were ever engaged in business with James M. Venable, of Petersburg, Virginia.

A. I was, sir.

Int. 4. In what capacity?

A. General manager.

Int. 5. When?

A. Immediately after the war; I don't remember the exact date, but immediately after the cessation of the war: I think it was July, '65, as well as I recollect.

Int. 6. How long did you continue in that capacity?

A. Up to the date of his death, sir.

Int. 7. With whom were you engaged in business after his death?

A. J. P. Williamson, of Petersburg, in the same capacity.

Int. 8. How long were you with Williamson?

A. I was with him till '71.

Int. 9. After you left Williamson what business were you engaged in?

A. I engaged in manufacturing tobacco on my own account.

Int. 10. While you were acting as manager for Venable, state whether or not you knew of his making some tobacco known as "Atlantic Cable Coil."

A. Yes, sir; I am aware of his making tobacco of that style, and known by that name.

Int. 11. State what the origin of that style of tobacco was, and from whose suggestion it came.

A. The origin was suggested by the laying of the Atlantic cable at that time; I suggested it to Mr. Venable, and he agreed to the experiment, and I executed the experiment.

231 Int. 12. What was the design as indicated by the name of the tobacco?

A. The tobacco was made in the usual way, with one exception, that it was compressed by hand at the bench more than the ordinary plug.

Int. 13. Was that tobacco designed to imitate anything; if so, what?

A. It was designed to imitate a coil.

Int. 14. Describe how that tobacco was manufactured.

A. It was placed in a shape or mold with four compartments of twelve inches square each, the compartments of the frame or molds being between two and a half and three inches deep. The plugs were placed in there tightly so as to fill up the space. The plugs were twelve inches long, in diameter about one and one-half to one and three-fourths, rolled down hard at the bench into the roll. The usual top that was to all molds, which we called shape-molds, about twelve inches square, was laid on top of them the same as in any other molds or shapes. There were, as near as I recollect, some twelve boards that composed the shape in which they were packed. The top of that frame (referring to "Exhibit Blackberry Duplicate") we called one board. Those two parts, combined, make what we call one board of a mold. It was pressed by lever hand-power. It pressed the tobacco down flat to about half an inch. It was then taken out after that pressure and put back in the same compartments on the edge, and pressed again. It was not square then. It was put on the edge for the purpose of flattening the edges down. It was then taken out again, wrapped in tinfoil, and in cotton cloth over the tin-foil to protect the foil, and then wrapped with a coarse string; the intent of the string was to give it the appearance of coil. After it was wrapped in that way, it was placed back in the same compartments of the same mold, and there pressed again for the purpose of impressing the string into the tobacco. It was then taken out, the string and cloth removed, and was placed on the edge in the box; the box was filled altogether at one time with a certain number of layers, which constituted so many pounds. The head or lid was then put on, and put under, what we call, a box-press or screw, and the head pressed down in the usual way. That was the whole process of manufacturing.

232 Int. 15. How many of these twelve-inch square blocks were there on each top?

A. Four, sir.

Int. 16. State whether or not this tobacco at any time during the process of manufacture went to the finisher?

A. No, sir; it went through no other process but what I have just described.

Int. 17. Did Venable, during the time that he was packing this fancy coil, also make plug tobacco?

A. Yes, sir; coil was but a fractional part.

Int. 18. State whether or not he had the ordinary finishers in his establishment at that time, and, if so, for what purpose they were used?

A. He had the finishers, and they were used for all kinds of that plug.

Int. 19. How were the flat plugs pressed in the finishers—between what?

A. There were charcoal tin on both sides, bottom and top, and wrought-iron plates between the tins.

Int. 20. What is the object of the tins in the finisher in pressing plug tobacco?

A. The object is generally understood to give a smooth surface and to keep the plugs from sticking together.

Int. 21. Did the cable coil that you have referred to receive a finish, as that word is understood among tobacco men?

A. No, sir; it did not.

Int. 22. State whether, during the time that you were engaged with Venable and with Williamson, any different method of making this cable coil was employed than that you have hereinbefore described?

A. There was no other.

Int. 23. State whether this process of making cable coil by Venable, and afterwards by Williamson, was used publicly, or whether it was a secret use, known only to those using it?

A. When we first conceived the idea of making it we kept it strictly private; we never let manufacturers have full access to the house in any case, and afterwards we used all the precaution
253 we possibly could to keep all other parties, except the operators, from the house.

Int. 24. Did you ever know of the process being used by any one except by Venable and Williamson?

A. No, sir; not up to this date.

Int. 25. Since you have been in business by yourself have you used it?

A. I have not, sir.

Int. 26. How did the expense of making tobacco by this process compare with ordinary methods?

A. I couldn't answer that question definitely, sir.

Int. 27. Answer it as near as you can from your experience as a tobacco manufacturer?

A. I should suppose, from the fact of one extra pressure, and the number of operatives engaged in wrapping with a cloth and string, and afterwards the expense of removing the same, that it would cost at least from one-fourth to one-fifth more than the ordinary mode of manufacturing.

Int. 28. Do you know to what extent finishers, for finishing the tobacco between tin or other plates after the tobacco comes from the molds, are used by the Virginia manufacturers? If so, state how commonly they are employed.

A. I know of no manufacturer in Richmond or Petersburg who does not use them.

Int. 29. Have you heard of the method of impressing a name or trade mark into the face of plug tobacco by means of impressions in the tins employed in the finisher to finish the plugs such as is used

by Miller & Worley, of St. Louis, and Finzer & Bros., of Louisville?

A. I have, sir. I have made considerable inquiry about it for the last twelve months. I would like very much to use it, but I was afraid to infringe on his patent, to bring on a law suit; that was the only reason.

Int. 30. What is your opinion of this process as to cheapness, completeness, and durability of the mark, and ornament of the plug?

A. Not having used this process I can say nothing definitely as to the cheapness of it, except as compared to the process of making coil. The durability is self-evident. I have seen a box of it in Baltimore, and I was struck with the handsome appearance of it. Plates, when once marked, last, ordinarily, as long as if they were not marked at all. I have never used them. As to the exact cost, some manufacturers have their own machinery for making the impression on the tins and also making small tags to go on the plugs. The cost depends on the quality made or used, of course.

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Int. 31. What is your opinion, derived from your experience in working tobacco, as to the effect that would be produced by attempting to mark a plug of tobacco by means of raised letters on the face of the block in the mold, where the tobacco received one pressure in the molds with the mark, and the plugs were then either packed in caddies, or pressed in finishers before going into the caddy. I mean to ask now as to the effect in regard to the durability of the mark.

(Objected to by Mr. Boyd, for the witness' testimony shows that he has never had any experience in so marking tobacco.)

Counsel for complainants adds: I desire you to answer this question from your general experience as to the peculiarities of the working of tobacco.

A. Not having used this process, I can only give you a general opinion from my experience. I don't see that it would be practicable to satisfactorily mark a plug made by hand. It may do better on plugs made by machinery, as they are already partly compressed. But in any case, the nearer the plug is to a solid and smooth surface, the better the impression would be, in my opinion.

Int. 32. Suppose that you press tobacco as hard as you can, and then let it stand for awhile under that pressure, what is the effect as to its capacity for then receiving further compression?

A. In my experience I have put three hundred tons pressure on tobacco, and, in order not to break the machinery, or take the chances of breaking it, I have frequently put twenty-five tons more on the same shape of tobaccos in the course of an hour or two. In all cases making dark tobaccos when the finishers are left full over night, I always put a small pressure on them the next morning, always, never fail. My experience is, the longer it stands

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in the machinery, the more room there is for extra pressure, that is, inside of twenty-four hours.

WILLIAM LORAM.

Sworn to and subscribed before me, this 1st day of April, A. D. 1879.

J. F. TWOHIG,
Notary Public, Hamilton County, Ohio.

236 EXHIBIT RYAN CIRCULAR—WALBRIDGE, *Etc.*

To Dealers in Tobacco.

In the early part of last June Miller & Worley and John Finzer & Bros. instituted suit against S. J. Force & Co. for alleged infringement of their patent for marking plug tobacco with an impression. The defendants promptly crossed swords with the mighty plaintiffs, and the issue was squarely made up. Since then the suit has dragged out its slow length without one move on the part of the plaintiffs to indicate that they desired a speedy trial of the case. It was expected that this case would determine the rights of the contestants, and that the plaintiffs would await its decision before taking any action against the dealers, who, if there be any infringement, had no hand in originating it. This expectation has been disappointed by the plaintiffs' bringing suits against innocent dealers, and seemingly abandoning the fight with those who are armed for the contest. By this move the plaintiffs show that they are evidently afraid to face the impregnable defense the defendants have set up, and in their desperation hope to obtain an injunction against some unwary defendant, and thereby intimidate the trade. We leave it to the trade to pass judgment on the conduct of the plaintiffs, which shirks a real issue with the manufacturers, and yet seeks to annoy their customers with useless suits.

The object of this circular is to advertise to the trade that the motive of the plaintiffs is known, all their movements closely watched, and that we, the undersigned, individually and collectively, pledge ourselves to protect our customers against all suits which Miller & Worley and John Finzer & Bros. may bring against them for al-

237 leged violation of their patent. We are actuated in this, first, because the matter on which they have their patent is not patentable; and, secondly, because, if it were, the proof will show that neither Miller & Worley or John Finzer & Bros. are the inventors, but, on the contrary, have undertaken under cover of the law to appropriate to themselves the invention of some one else. For these and other reasons which we cannot crowd into a circular, we intend to fight them, as they say in Kentucky, "from end to end."

We would thank our customers who may be sued by Miller & Worley and John Finzer & Bros. to communicate the fact and send all papers to Samuel S. Boyd, counsellor-at-law, No. 506 Olive street, St. Louis, Mo., who has been retained by us to attend to all such

suits. Also communicate with any of the undersigned with whom they may be in correspondence.

We trust you will continue to handle our marked tobacco, without fear, as we pledge ourselves to protect you against all damages.

S. J. FOREE & CO., Louisville, Ky.
WEISSINGER & GATE, Louisville, Ky.
LIGGETT & MYERS CO., St. Louis, Mo.
SENOUR & NOONAN, Covington, Ky.
BUCHANAN & LYALL, New York.
E. HOLBROOK & CO., Louisville, Ky.
S. W. VENABLE & CO., Petersburg, Va.
EVERSON, WILSON, & CO., Louisville, Ky.
RYAN & CUMMISKEY, St. Louis, Mo.
CHRISTIAN PEPER, St. Louis, Mo.
THE STATE OF KY. TOBACCO MFG CO.,
CHAS. C. MENGEL, Sec., *President.* } Louisville, Ky.
BOYD & CO., St. Louis, Mo.

238 EXHIBIT ANTON MILLER AND CHRISTIAN WORLEY PATENT.

UNITED STATES PATENT OFFICE.

ANTON MILLER and CHRISTIAN WORLEY, of St. Louis, Missouri.

Improvement in Finishing Tobacco-Plugs.

Specification forming part of letters patent No. 185,119, dated December 5, 1876; application filed September 23, 1876.

To all whom it may concern:

Be it known that we, Anton Miller and Christian Worley, both of the city and county of St. Louis, and State of Missouri, have invented a certain new and useful method of marking tobacco plugs, of which the following is a full, clear, and exact description, reference being had to the accompanying drawings, making part of this specification.

Our improvement consists in pressing into the broadside of the plug (during the process of manufacture, preferably) letters or other signs, so as to be indelible.

The main purpose is to prevent false marking of plug tobacco after it leaves the hands of the manufacturer.

In the drawings, figure 1 is a perspective view of the plug of tobacco, showing the impression of the letters in the broadside thereof. Fig. 2 is a face view of part of a compress-plate, showing the letters in relief. Fig. 3 is a section through the plug at *x x*, Fig. 1, with the impression at bottom. Fig. 4 is a section at *x' x'* Fig. 2.

A is a plug of tobacco, and at B are shown letters impressed in broadside of the plug. A' is the compress-plate, having at B' letters in relief, by which the impression at B is formed, the plugs, in finishing, being packed with alternating plates in the finisher, so that they take their permanent set with the impression in them, so that said impression is indelible.

239 In carrying out our invention we have used the process of finishing tobacco as described in patent No. 181,512, issued to Worley and McCabe, on the application of Christian Worley, and dated August 22, 1876.

Our preferred manner of forming the letters on the plates A′ is by stamping them therein and then making the letters solid by filling in the concave side of the letters with melted metal, such as solder, so that said letters will withstand the extreme pressure to which they are subjected in the finishing-box.

We do not confine ourselves to the above-described method of making the compress-plate A′, for any plate having letters in relief upon it, formed to be easily withdrawn from the impression, would answer the purpose. For instance, a plate with the letters cast upon it, or a plane plate with the letters made separately and afterward fixed on the face of the plate.

This system of marking may be used in conjunction with the ordinary finishing process by having the letters in relief on pressure-plates used in the last pressing.

We do not, of course, confine ourselves to any particular form of words or letters in the impression B, as the method may be used in the application of any trade mark, or other sign or word desired.

We claim as our invention—

The mode of simultaneously stamping and finishing tobacco, consisting of tightly compressing the plugs between plates having in relief letters in alternating series, substantially in the manner described.

ANTON MILLER.
CHRISTIAN WORLEY.

Witnesses:
SAML. KNIGHT.
WM. REGAN.

240 United States Circuit Court, District of Kentucky. In Equity.

ANTON MILLER and CHRISTIAN WORLEY *et al.*, *vs.* S. J. FOREE & Co. *et al.* } No. 3877.

It is hereby stipulated and agreed by and between the parties hereto that the annexed printed copy of the depositions of J. E. Atkinson, John W. Barne, Charles D. Bennett, James C. Cochran, George W. Davidson, William M. Davidson, Charles Evans, John B. Gadd, William Henry Gadd, Daniel N. Huddleston, Robert E. Huddleston, James B. Hughes, William Kemper, Cullin D. McMillan, Hugh McMillan, J. B. Metcalfe, W. C. Shayer, Neil Stewart, Frederick Stewart, John A. Warden, Jr., John S. Wilkinson, M. W. Wright, Calvin J. Wilson, and Daniel McCallay and Arthur L. Robin-

241 son, taken on behalf of the complainants (so far as they relate to the use of the Smith Plate), and the depositions of Smith, Davidson, Lee, Huddleston, and Drummond, taken on behalf of the defendants (so far as they relate to the use of the Smith Plate),

in the case of Miller *et al. vs.* The Liggitt & Myers Tobacco Company, in the United States circuit court for the eastern district of Missouri, may be filed in this cause, and be considered as a part of this record.

HATCH & STERN,
Sol'cs for Compl'ts.
SAML. S. BOYD,
Def'ts' Sol'r.

242 United States Circuit Court, Eastern District of Missouri.

ANTON MILLER, CHRISTIAN WORLEY, *et al.*
vs.
THE LIGGETT & MEYERS TOBACCO Co. *et al.*

Proofs on the part of the complainants, for final hearing, taken before Saml. H. Davidson, special examiner, beginning May 10th, 1880, at the office of said Davidson, in Evening Shade, Arkansas, under and pursuant to the 67th rule in equity as amended.

Present: Arthur Stem, for complainants, and Joseph L. Abernethy, for respondents.

J. R. METCALF, a witness of lawful age, being first duly sworn, deposes and says, in answer to questions propounded by ARTHUR STEM, Esq., counsel for complainants, as follows:

First question by complainants' solicitor:

Int. 1. State your name, age, residence, and occupation.

A. My name is J. R. Metcalf; 33 years old; Evening Shade, Arkansas; and a merchant.

Int. 2. Are you a member of the firm of Williams & Metcalf, of this town?

A. Yes, sir.

Int. 3. How long have you resided here?

A. Twenty-two years.

Int. 4. How far is this town from the nearest railroad?

A. I call it forty miles.

243 Int. 5. Is there any tobacco of any amount raised for market in this section of country?

A. None to amount to anything.

Int. 6. Do you know Edwin F. Smith, of this town?

A. Yes, sir.

Int. 7. Where did Mr. Smith procure, so far as you know, the tobacco used in his factory here?

A. From Missouri, so far as I know; some from St. Louis, Missouri.

Int. 8. State whether or not your firm handled tobacco manufactured by Mr. Smith; if so, how much?

A. We have handled Mr. Smith's tobacco off and on ever since he commenced manufacturing here.

Int. 9. Please state whether you ever bought or sold any tobacco manufactured by Mr. Smith, marked by letters or with a name pressed into the plug.

A. Not to my knowledge.

Int. 10. If any tobacco so marked had been brought to your store or sold there, state whether or not you would have known it.

A. I think I would.

Int. 11. Please give the names of the merchants in town who sell tobacco.

A. J. W. Shaver & Sons, J. P. Cochran & Son, Williams & Metcalf, Davidson & Wainwright, T. J. Spurlock, and E. G. Henderson. At Wright's drug store they have sold tobacco.

Int. 12. Are there any other merchants in this town, besides those you have named?

A. I think not.

Cross-examination by defendants' solicitor:

X Int. 1. Do you know where Edwin F. Smith purchased tobacco for manufacturing in the year 1875?

A. I cannot be positive where he purchased tobacco in that year.

X Int. 2. Do you, of your own knowledge, know of his purchasing any leaf tobacco in the year 1875?

A. I think he did.

241 X Int. 3. Where, and from whom?

A. I am not certain at this time; I cannot remember at this time.

X Int. 4. Were you in or about his manufactory frequently during the spring or summer of 1875?

A. I was there once in a while, I think.

X Int. 5. Did you, in the spring or summer of 1875, have any personal knowledge of the manner of his putting manufactured tobacco in caddies?

A. No, sir.

X Int. 6. What was the style of the firm known as the Williams firm in the summer of 1875?

A. W. R. Williams & Son.

X Int. 7. Were you a member of that firm at that time?

A. I was not; I was with the firm as clerk and salesman at that time, and became a member of the firm in January, 1878.

X Int. 8. State if you assisted in keeping the books of said firm in the summer of 1875.

A. I did.

X Int. 9. State if you know from personal knowledge whether Williams & Son purchased tobacco from Smith, as dealers, manufactured by Smith in the summer of 1875?

A. I am not positive as to the exact time, but think they did.

X Int. 10. If they did so purchase, was it in small or large quantities?

A. In small quantities.

X Int. 11. State the manner of your dealing in the Smith tobacco—how you purchased it and how you disposed of it.

A. We would purchase from one to five caddies at a time, and dispose of it by retail.

X Int. 12. Did you ever examine the plugs of tobacco manufactured by Smith in 1875 to see whether his name was impressed thereon or not?

A. I do not know that I ever did.

X Int. 13. Was any tobacco left at the store of Williams & Son, manufactured in 1875 impressed with Smith's name?

A. Not to my knowledge.

245 X Int. 14. State if you know anything about his manufacturing tobacco with his name impressed on the plug.

A. I have seen one or two plugs with his name impressed on it, which he at one time represented to be his work.

X Int. 15. Do you recollect who it that was?

A. I presume it was in 1875 or 1876.

X Int. 16. Did Smith impress his tobacco generally with his name at that time?

(The question numbered 16 objected to by plaintiffs' solicitor.)

A. I think not.

X Int. 17. State whether or not the firm of Williams & Son, at that time, dealt in other tobacco than that manufactured by said Smith.

A. They did.

X Int. 18. Do you, of your own knowledge, know that Smith did not manufacture tobacco with his name impressed thereon at that time?

A. I think I can safely say that I do.

X Int 19. Upon what do you base your knowledge?

A. Upon the fact that I know that he manufactured it in that way only as a kind of experiment.

X Int. 20. Was the experiment successful, or otherwise?

A. I cannot say.

X Int. 21. Are you certain of your own personal knowledge, after making the experiment, that Smith did not put up tobacco with his name impressed on it, for sale here or elsewhere?

A. I think I am.

X Int. 22. In what way did you get that knowledge?

A. From seeing tobacco manufactured since that time without the impression on it.

X Int. 23. Did you, yourself, see or examine any or all the tobacco manufactured by Smith in the summer of 1875?

A. I think I did see and examine some of it.

X Int. 24. Are you positive that the tobacco you examined, manufactured by Smith, was some that was manufactured in the summer of 1875?

A. Some of it was in the year 1875. I cannot say positively it was manufactured in the summer.

246 X Int. 25. Have you personal knowledge that the tobacco manufactured in the summer of 1875, and sold to other dealers was not impressed with the stamp?

A. No, sir.

X Int 26. What are your reasons for believing that the tobacco

purchased for manufacture by Mr. Smith came from Missouri and St. Louis?

(The complainants, by their solicitor, object to the above question, numbered 26.)

A. From the fact that there was not a great deal of tobacco in the country.

X Int. 27. Do you know of Mr. Smith purchasing tobacco from Missouri and St. Louis, Missouri?

A. That was my understanding.

X Int. 28. State whether or not Mr. Smith showed you the one or two plugs you spoke of, marked with his name, as something new he was experimenting on.

A. That was my understanding at the time.

X Int. 29. Did you ever see another plug of Smith's tobacco, or hear of the matter again until the fall, when it was spoken of with respect to this suit?

A. To my knowledge, I never saw any more tobacco with the stamp upon it, but likely heard the stamp spoken; cannot say.

JOHN R. METCALF.

M. W. WRIGHT, being duly sworn, deposes and says:

Int. 1. State your name, age, residence, and occupation.

A. M. W. Wright; residence, Evening Shade, Arkansas; occupation, druggist; age, 30 years.

Int. 2. How long have you been engaged in the drug business here?

A. Since 1874.

Int. 3. State whether, in your drug-store, you sell tobacco.

A. I do.

Int. 4. State whether you have sold tobacco manufactured by E. F. Smith, of this place.

247 A. I have.

Int. 5. During what period have you sold such tobacco?

A. From the time he commenced manufacturing until the year 1879.

Int. 6. During said time do you recollect selling any tobacco marked with name of E. F. Smith impressed in the plugs?

A. I do not.

Int. 7. Do you recollect of ever selling, or hearing of, tobacco marked in that way prior to some time last fall?

A. I do not.

Int. 8. If you had sold it, or seen it, you would be apt to recollect it, would you not?

(The defendants object to the question.)

A. I think that I would.

Int. 9. Did you know Robt. E. Lee, who worked for Mr. Smith in the year 1875?

A. I knew a man who called himself Robt. E. Lee.

Int. 10. Are you, or were you, so situated as to know, and do you know, the reputation of said Lee in this community for honesty and truthfulness?

(Objected to by defendants.)

A. I do know his reputation.

Int. 11. What is that reputation?

A. It is bad.

Int. 12. Did said Rob't E. Lee reside in this town while he was in the employ of Mr. E. F. Smith?

A. He did.

Cross-examined by defendants' solicitor:

X Int. 13. Do you, of your own knowledge, know that any of the Smith tobacco that you sold was manufactured by Smith in the summer of 1875?

(Question objected to by plaintiffs' solicitor, as not pertinent in cross-examination.)

A. I bought tobacco in 1875 of Mr. Smith's manufacture; I cannot say what year it was manufactured in.

X Int. 14. Did you deal in Smith's tobacco exclusively; and, if not, to what extent did you deal in said tobacco?

248 A. I did not deal in Smith's tobacco exclusively, but the larger part of my tobacco dealing was in Smith's tobacco.

X Int. 15. State the manner of your dealing with Smith, that is, how you bought it and how you sold it.

A. I would buy from one to three caddies at a time, and sell by the pound and retail.

X Int. 16. How many caddies of said tobacco did you handle per month or year?

A. I think about ten caddies per year.

X Int. 17. How many persons did you ever hear speak of the reputation of Lee?

A. I do not recollect exactly.

X Int. 18. Can you give the names of any one you ever heard speak of his reputation?

(Question objected to, as above.)

A. I do not recollect any names positively.

X Int. 19. Was Lee a stranger at this place?

A. When he came here he was a stranger to me.

X Int. 20. When did he come, how long did he remain, and when did he leave?

A. I cannot answer that question. I think he staid here about a year, about that time, or it might have been longer.

X Int. 21. During the time of his residence here was his reputation for honesty and truthfulness questioned or discussed by the community?

A. Very little, to my knowledge.

X Int. 22. During the time he resided here did he have any particular reputation with which you are familiar?

A. Some little.

X Int. 23. When was it that his general reputation, as spoken of by you in your direct examination, came to your knowledge; was it after he left here or before?

A. The principal part after he left.

X Int. 24. Did or did not it grow out of Smith's difficulties with the Government?

(Objected to, as incompetent, and because the witness cannot testify as to the source of other people's opinions.)

249 A. A larger portion of it I suppose.

X Int. 25. Is not the opinion that you have expressed as to his reputation founded upon your personal dealings with Lee?

A. Not altogether; partly so.

M. W. WRIGHT.

W. C. SHAVER, being duly sworn, deposes and says, in answer to interrogations:

Int. 1. State your name, age, residence, and occupation.

A. My name is W. Carrol Shaver; residence, Evening Shade, Arkansas; occupation, merchant; member of the firm of J. W. Shaver & Sons.

Int. 2. How long have you been connected with the firm?

A. I have been connected since the year 1867, and have been a member of the firm since 1877.

Int. 3. State whether, during the year 1875 and 1876, the firm of J. W. Shaver & Co., or J. W. Shaver & Sons, handled tobacco manufactured by E. F. Smith, of this place.

A. The firm commenced handling his tobacco when he began to manufacture here, and handled it until he ceased the manfacture of it in 1876.

Int. 4. During that time did your firm, so far as you know, have any of Smith's tobacco which was marked by impressing his name in the plugs?

A. If it did I did not see it.

Int. 5. Did you ever see any with his name impressed upon the plugs?

A. If I did I do not remember it.

Int. 6. Did you ever hear of his making tobacco in that way prior to last fall?

A. I do not remember really whether I ever did or not.

Int. 7. Did the firms of J. P. Cochran & Son, E. G. Henderson, and T. J. Spurlock do business here prior to 1878?

A. None of them but J. P. Cochran, who was out of business, however, from about 1872 to 1878.

250 Cross-examined by defendants, by their solicitor.

X Int. 8. Do you, of your own knowledge, know whether any of the tobacco handled by the said Shaver firms, or that you saw of the

Smith manufacture, was manufactured during the summer months of the year 1875?

A. I do not really know whether it was manufactured in the year 1875 or during some other months.

W. C. SHAVER.

JOHN S. WILKERSON, being duly sworn, deposes and says:

First question by plaintiffs' solicitor:

Int. 1. State your name, age, residence, and occupation.

A. My name is John S. Wilkerson; my age, thirty years in June next; my occupation, blacksmith; and residence, Evening Shade, Sharp county, Arkansas.

Int. 2. How long have you resided in Evening Shade?

A. I came here in the fall of 1875, and have resided here ever since.

Int. 3. Where did you reside before you came here, and what was your business there?

A. In Springfield, Missouri, and was a tobacco-roller by trade.

Int. 4. What was your purpose in coming here?

A. I was out of employment, and came here to get employment in E. F. Smith's tobacco factory (as they only worked seven months in the year there, and I learned that they worked the year round here) in order to be employed the year round.

Int. 5. Did you go into Mr. Smith's employ that fall or winter?

A. I did not, but I did subsequently.

Int. 6. Why were you unable to get more work in his factory when you came here?

A. Well, he had a man at work who, I suppose, was capable of doing about the amount of work he had to do; and, really, when I saw the shop and the amount of leaf he had on hand, I did not apply to him for such work, though there was some talk, too, though it did not amount to anything.

251 Int. 7. Who was the man employed as roller?

A. Robt. E. Lee.

Int. 8. State whether or not you were in the habit of going frequently to Mr. Smith's factory, and what you did there.

A. Yes, I was there frequently while Mr. Lee was there; several times at least. Sometimes I would work a few lumps or cuts for him, and sometimes was in the press-room; in fact, had to go through the press-room to go into the rolling-room.

Int. 9. Were you in the habit of frequently dropping in and talking to Lee, and helping him at his work while you talked?

A. Yes, sir.

Int. 10. On these occasions, or any of them, did you ever see any tobacco marked with the name of E. F. Smith pressed into the plugs?

A. I did not.

Int. 11. Did Mr. Lee ever speak to you about making tobacco in this way?

(Objected to as hearsay, irrelevant, and not in rebuttal.)

A. He never did.

Int. 12. If tobacco had been worked in that way in that factory while Mr. Lee was there, do you think, from your knowledge of the factory, that you would have been apt to know it?

(Objected to, because it is indefinite, irrelevant, and not in rebuttal.)

A. If he had been doing it when I was present I would have known it, but what tobacco I saw him handling in the moulds or finisher had no such mark upon it.

Int. 13. Do you know the reputation of this man, R. E. Lee, in this community for truth or immorality?

A. I think I do.

Int. 14. What is that reputation?

A. I consider it bad.

Cross-examined by defendants, by their solicitor:

X Int. 15. What time was it in the fall of 1875 you came to Evening Shade?

A. Either in the latter part of October or in November; though I think it was in October.

252 X Int. 16. What was the date, and how long were you in the employ of Mr. E. F. Smith in the factory?

A. I think it was in the spring of 1877, and I worked for him about two weeks.

X Int. 17. Do you, of your own knowledge, know whether any tobacco was manufactured in Smith's factory during the summer months of 1875?

A. No, sir.

X Int. 18. You do not pretend to know, or say, that Smith did not use the plate to impress his name in tobacco at any time, except when you was in the employ of Smith, and when you would visit Lee in the factory?

A. No, sir; I do not.

X Int. 19. When did you become familiar with the reputation of Lee—was it before or after he left here?

A. It was before and afterwards, both.

X Int. 20. How many persons did you ever hear call in question, or discuss his reputation for truth or immorality?

A. I do not now know.

X Int. 21. Give me the name of any person or persons residing in Evening Shade whom you have heard call in question his reputation for truth or immorality.

(Objected to by plaintiffs' solicitor.)

A. I don't know that I can give you the name of any particular person; the most is just what I know myself.

X Int. 22. Then, your knowledge or opinion of his said reputation is founded upon your personal knowledge of the man.

(Objected to, as containing an assumption not warranted by the witness' testimony.)

A. Part of it is, and part of it is not.

JOHN S. WILKERSON

ROBT. E. HUDDLESTON, being duly sworn, deposes and says:

First question by complainants' solicitor.

Int. 1. State your name, age, residence, and occupation.

253 A. My name is R. E. Huddleston; my age, twenty-four years; my residence, Evening Shade, Sharp county, Arkansas; have been deputy clerk of the circuit court of Sharp county, which position I hold at this time, and am examiner of the teachers of the public schools of the county.

Int. 2. State whether you were deputy clerk in the year 1875 and 1876, and when the court-house was located, with respect to E. F. Smith's tobacco factory?

A. I was not a sworn deputy, but was employed in the clerk's office by Mr. James P. Cochran, then clerk, in 1875, and perhaps the early part of 1876; the court-house was located about northwest from said factory, the distance being about twenty yards.

Int. 3. State whether or not, during the fall and winter of 1875, you were in the habit of frequently going into Mr. Smith's tobacco factory?

(Objected to, as being irrelevant, and not in rebuttal.)

A. I cannot say whether my visits were habitual, but I was frequently in the factory.

Int. 4. State whether you ever saw any tobacco manufactured by Mr. Smith marked by means of letters impressed in the face of the plugs?

A. I have never seen tobacco so marked.

Int. 5. State whether, prior to last fall, you ever heard of tobacco being marked in that way in Mr. Smith's factory?

A. I never heard of it until at and after the time of the visit of Mr. Foree, in the last fall or winter.

Int. 6. How large a town is this?

A. I suppose it has a population of three hundred; the voting population is about sixty, and, taking five persons to the voter, it would be three hundred.

Int. 7. What is the character of the roads between here and the nearest points on a railroad?

(Objected to, as irrelevant, and not in rebuttal.)

A. I do not consider the roads very good; so far as I know they are bad.

Cross-examined by defendants, by their solicitor:

X Int. 8. What time in the year 1875 were you engaged in the clerk's office?

254 A. A portion of the summer and fall, and a part of the winter.

X Int. 9. When you visited the tobacco factory, did you examine the moulds and finisher at any time?

A. I am unacquainted with the machinery of a tobacco factory, the names of parts, but examined such machinery as was visible, merely through curiosity.

X Int. 10. Did you ever see or examine any tobacco of the Smith manufacture, that you know was manufactured by him during the summer months of 1875?

A. I have seen tobacco that was said to have been manufactured at that time. I never saw it in process of manufacture.

Redirect examination by plaintiffs, by their solicitor:

R. Int. 11. Do you mean to say that during the summer of 1875 you did not see any tobacco being manufactured in Smith's factory?

A. I do not mean to say that. I mean to say that I did see tobacco but could not afterwards identify it as the same.

R. Int. 12. Then, you saw tobacco being manufactured in the summer of 1875, but you do not know that you could identify any tobacco after it was completed as the same that you saw being manufactured?

A. I did, but of course could not identify it after its manufacture.

Recross examination by defendants, by—solicitor:

R. Int. 13. During the summer months of 1875, how often did you notice the manufacture of tobacco, and how much tobacco did you see manufactured?

A. I passed the factory quite frequently and saw them working with the tobacco. Sometimes stopped at the factory for a few minutes, but kept no account of visits, nor do I know how much I saw being manufactured.

R. Int. 14. Then, you, of your own knowledge, do not know that Smith did or did not use a plate to impress his name on the tobacco during the summer months of 1875?

A. I do not know whether he did or not.

ROBERT E. HUDDLESTON.

255 GEORGE W. DAVIDSON, being duly sworn, deposes and says:

First question by plaintiffs' solicitor:

Int. 1. State whether or not you are the George W. Davidson who testified in this cause in St. Louis.

A. I am.

Int. 2. Please state, as near as you can recollect, how soon after you delivered the plate containing the name of E. F. Smith, as you then testified, to Mr. Smith he showed you the plug of tobacco marked as described in your former deposition.

(Objected to, as not being in rebuttal.)

A. My recollection is, that it was only a short time.

Int. 3. Were the edges of the letters on that plug smooth, or were they somewhat rough?

A. They were rough.

Int. 4. If that plate were pressed into a plug of tobacco, so that the letters would make an impression upon the plug that would last, would they, or would they not, cut the edges of the letters?

(Objected to, upon the grounds that this witness is not an expert in the manufacture of tobacco.)

A. My opinion is, that they would.

Int. 5. Did you ever see a plug of tobacco marked in that way, after that one that Mr. Smith first showed you?

(Objected to, as being leading, and not in rebuttal.)

A. If I ever did I have no recollection of it.

Int. 6. When you got up this plate, as was stated in your former deposition, was or was there no agreement with Mr. Smith that, if the invention was a success, you were to have an interest in it?

(Objected to, as not in rebuttal.)

A. Yes, sir; that was the agreement.

Int. 7. So far as you know, was there ever anything more done with it after that plug was shown you?

A. So far as I know, to my certain knowledge, there was not, but I cannot state about this; I never saw it worked at any time.

Int. 8. Did you, or did you not, regard it as a failure and an abandoned experiment?

(Objected to, upon the grounds that this witness is not an expert in the manufacture of tobacco.)

256 A. The ends were never accomplished that I set in for, because I wanted a patent on it then; I would have considered the whole thing complete, that is, if it had been patented.

Int. 9. Was anything ever said about it again between you and Mr. Smith, until some time last fall or winter?

A. Nothing that I remember of, not a word for two or three years, until I received a letter from George Wicks & Co.

Cross-examined by the defendants, by their solicitor:

X Int. 10. State if you have any practical knowledge or experience in the art of tobacco manufacturing.

A. No, sir; I have never worked at the business.

X Int. 11. Do you, of your own knowledge, know that Smith did not abate the experiment in the manufacture of tobacco.

A. No; I do not know what Smith did.

G. W. DAVIDSON.

At this point the further taking of testimony is, by consent of the parties, by their solicitors, adjourned till to-morrow, Tuesday, May 11th, 1880, at 9 o'clock a. m.

SAMUEL H. DAVIDSON,
Special Examiner.

TUESDAY, *May* 11, 1880, 9 O'CLOCK A. M.

Met pursuant to adjournment. Both parties being present, by their solicitors.

DANIEL N. HUDDLESTON, being duly sworn, deposes and says:

First question by complainants' counsel:

Int. 1. State your name, age, residence, and occupation.

A. My name is Daniel N. Huddleston; my age, 50 years; residence, Evening Shade, Sharp county, Arkansas; and am justice of the peace.

Int. 2. How long have you resided in Evening Shade?

A. Since May 1st, 1875.

Int. 3. Please state whether you were in the habit of going
257 into Mr. Smith's tobacco factory here while it was in operation, and noticing what was going on there.

A. I was in the factory frequently, and saw them at work; went in on purpose to see them at work.

Int. 4. State whether you ever saw tobacco manufactured there marked with letters, or a name impressed in the plug, during the summer, fall, or winter of 1875.

A. If ever I saw any so marked I have no recollection of it.

Int. 5. If tobacco had been marked in that way by Mr. Smith during that period, do you think you would have been apt to notice it, or not?

A. I think I would.

Int. 6. Have you ever heard of tobacco being marked in that way at Smith's factory up till last fall?

A. I never heard of it until I heard of this lawsuit; do not remember the exact time I heard of this lawsuit; some time back, though.

Int. 7. During the time spoken of, were you in the habit of buying Mr. Smith's tobacco for your own use?

A. I bought tobacco that was manufactured—put up by Mr. Smith; I did not use it exclusively.

Cross-examination by defendants' solicitor:

X Int. 8. Are you acquainted with, or familiar with, the process and mode of manufacturing tobacco?

A. I am not, though I have an idea of how it is done. I never worked at the business.

X Int. 9. Can you say from your own observation and recollection that Smith did or did not use a plate to impress his name on tobacco in the manufacture thereof during the months of June, July, and August, 1875?

A. He might have done so, but if he did I know nothing of it.

X Int. 10. Can you state that the tobacco that you purchased and used of the Smith manufacture, or any portion thereof, was manufactured by him during those months?

A. I cannot.

258 X Int. 11. What was the character of tobacco manufactured

by Smith, and did you purchase it for use in preference to other tobaccos?

A. The tobacco was not superior tobacco; it was dark and heavily sweetened tobacco. I always bought tobacco of Porter's make, and others when I could get it.

Redirect:

R. Int. 12. When you used to go into Mr. Smith's factory at the time named was Mr. Smith in the habit of showing you his machinery and the tobacco, and calling your attention and explaining some of the features of its manufacture?

(Objected to, as being uncertain and indefinite as to time and description of tobacco.)

A. If I recollect correctly, Mr. Smith did not often show me anything about the factory. Mr. R. E. Lee frequently showed me round at the factory. I would stand about it often and look on.

R. Int. 13. State whether Mr. Smith's tobacco factory here was seized by the United States Government?

A. It was seized and sold by the United States Government, by a deputy United States marshal.

R. Int. 14. What were the grounds for the seizure?

A. It was my understanding that it was for selling manufactured tobacco without affixing the proper amount of stamps.

R. Int. 15. When was it sold?

A. I think it was some time in 1875 or '6.

JAMES C. COCHRAN, being duly sworn, deposes and says:

First question by complainants' solicitor:

Int. 1. State your name, age, residence, and occupation.

A. James P. Cochran; age, 48 years old; occupation, merchant; residence, Evening Shade, Arkansas.

Int. 2. How long have you resided in Evening Shade?

A. Eleven years.

Int. 3. How were you engaged in the years 1875 and '6?

A. Clerk of the circuit court of this county.

259 Int. 4. State whether you know E. F. Smith, of this town.

A. Yes, sir.

Int. 5. How far was the court-house, while you were clerk, from Smith's tobacco factory?

A. About 25 yards.

Int. 6. Did you ever see any tobacco manufactured by Smith marked by letters or a name pressed into the plug?

A. I never did.

Int. 7. Did you ever hear of tobacco made by Smith so marked, prior to the last few months?

A. I never heard of it until lately.

Int. 8. Were there any other merchants in this town selling tobacco in 1875 and '76 beside Davidson, Metcalf & Williams, Wright, and Shaver & Sons?

A. I think not. It was Shaver & Co. at that time.

Cross-examination:

X Int. 9. The situation of Smith's factory was such that in going from your residence to your office you passed the factory?

A. Yes, several times every day; it was right on my way to my office.

X Int. 10. Was not Smith's factory kept closed to the public and a sign or a bar across the front door upon which was legibly painted the words "No Admittance"?

A. Yes.

X Int. 11. Can you state, from your personal knowledge, that Smith did or did not use in the manufacture of tobacco a certain plate to impress his name upon the plugs of tobacco?

A. I cannot.

JAMES P. COCHRAN.

CALVIN J. WILSON, being duly sworn, deposes and says:

First question by complainants' solicitor:

Int. 1. State your name, age, and residence.

A. My name is Calvin J. Wilson; my age, 32 years; and I reside in Evening Shade, Arkansas.

260 Int. 2. How were you engaged in the years 1875 and '76.

A. I was judge of the county and probate courts of this Sharp county.

Int. 3. Do you know E. F. Smith, of this town?

A. Yes, sir; I am acquainted with Mr. Smith.

Int. 4. While Mr. Smith's tobacco factory was in operation, were you in the habit of going in there and seeing what was going on, during the years 1875 and '76?

A. I was.

Int. 5. During such occasions did you see the tobacco in process of manufacture?

A. Yes, sir; I did.

Int. 6. Did you ever see any tobacco manufactured by Mr. Smith, or being manufactured by him with his name or letters impressed into the surface of the plug?

A. I am confident I never did.

Int. 7. Did you ever hear of his working tobacco in that way?

A. I never did.

Int. 8. Do you know whether E. F. Smith has ever been indicted in this county?

A. Yes; he has been indicted twice, I know, and perhaps oftener.

Int. 9. What was he indicted for?

A. For selling whisky on Sunday, against the law, and either for gambling, or permitting gaming in his house, that is, his saloon.

Int. 10. What was his business before he commenced manufacturing tobacco?

A. Keeping a drinking-saloon.

Int. 11. Do you know Thos. Y. Huddleston, of this place?

A. Yes, sir; I know him.

Int. 12. Has he ever been indicted by the grand jury of this county?

(Objected to, on the ground that the evidence is not competent.)

A. He has.

Int. 13. How often has he been indicted?

A. Four times, that I know of.

264 Int. 14. Was he convicted on these indictments?

A. I think he entered pleas of guilty to them.

Int. 15. What became of the indictments against Smith?

A. He was convicted.

Int. 16. Was Mr. Smith ever expelled from the Masonic fraternity of this place?

A. That has been my understanding, but I have never seen the record of it, nor was I a member of the lodge at the time it was said to have taken place.

Int. 17. What, as you understand them, were the charges against Mr. Smith?

(Objected to.)

A. It was my understanding that it was something he done while he had the office of either secretary or treasurer of the lodge and was for obtaining money from other lodges by corresponding with them.

Cross-examination.

X Int. 18. Can you say, of your own knowledge, that Smith did not mark his tobacco by impressing his name in the plugs, during the summer of 1875, or at any other time?

A. No, sir; I cannot.

X Int. 19. Was Mr. Smith the licensed owner of the saloon, with bar-keepers regularly employed?

A. He was the licensed owner, but kept there a considerable portion of the time himself; yet I think he had a bar-keeper employed during the time.

X Int. 20. How long have you been acquainted with Smith?

A. Ever since January, 1871; I had seen him a few times prior to that; I have lived a greater part of the time since then in the same town with Smith.

X Int. 21. During those years state whether his conduct, generally, has been that of a law-abiding citizen?

A. Generally I think it has.

X Int. 22. When was it that those indictments were pending against him in the circuit court of Sharp county?

A. I think in the year 1874.

262 X Int. 23. You are acquainted with his general reputation in the community in which he resides?

A. Yes, sir, I think I am.

X Int. 24. What is his standing here?

A. I do not know anything particular against it, that is, to know; of course there is some talk around about him.

X Int. 25. I suppose, then, he, like some others, has some friends and enemies in the community in which he lives?

A. Yes, sir, he has friends, and, of course, some enemies.

X Int. 26. How is he regarded in his business relations in this community?

A. I think he is regarded as an intelligent business man, and responsible; he has a farm on Strawberry river; I am not positive that he has title to the farm.

X Int. 27. What was the character of the offenses for which Huddleston was indicted?

A. I think they were for fussing and fighting—something like that.

X Int. 27½. Did not three of those indictments grow out of the same thing?

A. They did.

X Int. 28. How many times has he been elected sheriff and collector of the county of Sharp, successively?

A. Four successive terms.

X Int. 30. Are you acquainted with his general reputation in the community in which he resides?

(Objected to, as not in cross-examination.)

A. Yes, sir; I am.

X Int. 31. Have you and Captain Huddleston resided in the same town since 1871?

(Objected to, for same cause.)

A. We have, except the years 1875 and 1876.

X Int. 32. How is he regarded by his neighbors and the community generally.

(Same objection.)

A. He is considered reliable; in all his dealings he is deemed to be correct, and his standing as a man is very good.

263 Redirect examination:

R. Int. 33. You say that Smith has a farm on Strawberry river; have you not heard something about some crookedness in his getting possession of that farm?

(Objected to by defendant.)

A. I said he had a farm on Strawberry river, and believe I can say that I have heard something said about some crookedness in connection with his title; cannot say as to the nature of said crookedness.

Second cross-examination.

X Int. 34. Do you know from whom he purchased the farm, how much he gave for it, and if he has paid for it?

A. It is my understanding that he purchased the farm from one

Eldridge Walker: I do not know how much he gave, nor that it is paid for.

X Int. 35. Was the crookedness you speak of on the part of Smith in the transaction or on the part of Walker?

A. I think it was on the part of Walker.

CALVIN J. WILSON.

WILLIAM M. DAVIDSON, being duly sworn, deposes and says:

First question by complainants' solicitor:

Int. 1. State your name, age, residence, and occupation.

A. My name is William M. Davidson; age, 36 years; residence, Evening Shade, Arkansas; and I am an attorney-at-law.

Int. 2. How long have you resided in Evening Shade?

A. About eleven years, with the exception of about one year.

Int. 3. Do you know Edwin F. Smith, of Evening Shade?

A. I do.

Int. 4. State whether, during the years 1875 and '76, you were occasionally in said Smith's tobacco factory, and whether you ever saw there, or anywhere else, tobacco of his manufacture marked with letters or a name impressed in the plug?

A. I was in Smith's tobacco factory occasionally—not very often—but never saw tobacco so marked, either there or anywhere else.

264 Int. 5. Did you ever hear of his marking tobacco in that way?

A. No; not until this litigation came up.

Int. 6. Did you use Smith's tobacco yourself?

A. Yes, sir.

Int. 7. Do you think that you would have seen it or heard of it if he had marked tobacco in that way at his factory?

(Respondents object to the question.)

A. It is most likely that I would.

Cross-examination:

X Int. 8. Can you state, of your own knowledge, that Smith did or did not use plates to impress his name into the tobacco during the summer months of 1875?

A. I cannot.

WILLIAM M. DAVIDSON.

WEDNESDAY, *May 12th*, 1880, 9 O'CLOCK, A. M.

Met pursuant to adjournment.

Present, the same parties as yesterday, and

JAMES B. HUGHES, a witness of lawful age, being produced and duly sworn, deposes and says:

First question by complainants' solicitor:

Int. 1. State your name, age, residence, and occupation.

A. My name is James B. Hughes; am 43 years old; reside in Sharp county, Arkansas; and am a farmer.

Int. 2. State how you were engaged during the summer, fall, and winter of 1875.

A. I was keeping the hotel at Evening Shade and farming a little.

Int. 3. Where did you spend most of your time?

A. I stayed at the hotel most of the time, but was sometimes at the farm.

Int. 4. How was the hotel located with respect to E. F. Smith's tobacco factory?

A. The hotel was southeast from the factory, a distance of about thirty or thirty-five yards.

265 Int. 5. Are you acquainted with Mr. E. F. Smith, the owner of said factory?

A. I am, sir.

Int. 6. Were you acquainted with R. E. Lee, who worked for Smith in the factory?

A. Yes, sir: I knew him from the time he came here until he left.

Int. 7. Did Mr. Lee board with you?

A. He did, sir, as long as I kept the hotel, from the time he came here until he left.

Int. 8. State whether you were in the habit of going over to the factory; if so, how frequently.

A. I went sometimes to the factory twice a day; sometimes I would not go in as long as two days, but would generally go in twice a day or oftener; helped Mr. Lee and Mr. Smith frequently put down the press, and would stand by and see them work the press and finisher and take out the tobacco.

Int. 9. Were you pretty intimate with Mr. Lee?

A. Tolerably so while he staid here.

Int. 10. On any of the occasions you refer to did you ever see Mr. Smith or Mr. Lee marking any of the tobacco with letters or a name impressed into the plug?

A. No, sir.

Int. 11. From your intimacy with Mr. Lee, and your frequent visits to the factory, do you think you would have been apt to know it, if during the summer and fall of 1875 he had marked tobacco in that way?

(Objected to, because he asks the belief and opinion of witness.)

A. I think I should have known it, sir.

Int. 12. Did Mr. Lee say anything while he was boarding with you, or at any other time, about marking tobacco in that way?

(Objected to, on the grounds that time, places, and parties present have not been shown as a foundation, and because it seeks hearsay.)

A. No, sir, he never did.

Int. 13. What sort of a man was Mr. Lee, so far as you know?

266 (Objected to by respondent's solicitor, on the grounds that the question seeks the witness' opinion.)

A. He was a drinking man; all the time under the influence of whisky; drunk, and I had no confidence in him for that reason.

Int. 14. Do you know what a tobacco finish is?

A. Yes, sir; I do.

Int. 15. Did you or not frequently see Mr. Lee and Mr. Smith taking the tobacco from the finisher or from the moulds?

A. Yes, sir; I have.

Int. 16. If any of this tobacco had been marked with letters or a name, would you or would you not have been likely to notice it?

(Objected to.)

A. I would have noticed it, likely.

Cross-examination by respondents, by their solicitor:

X Int. 17. While engaged in the working of the press and in the manufacture of tobacco there, was not the public or outsiders excluded from the factory by express direction?

A. There was a bar across the front door with words prohibiting the public from an entrance, but I generally went in the factory with Mr. Smith or Mr. Lee at the back door. I had the privilege of going in whenever I wanted to.

X Int. 18. Does this back door open from the street or from the yard which surrounded the building, which was then the private residence of Mr. Smith?

A. It opens from the back end of the factory, next to the dry-house, from the factory yard.

X Int. 19. What is a finisher?

A. A finisher is an iron thing which is square inside, into which the tobacco is placed out of the moulds, where a screw is run down on the tobacco.

X Int. 20. Did you see Smith or Lee use any plate or plates of any description in the finisher?

A. I never did, sir.

X Int. 21. Did you ever see a zinc plate or a metal plate of any description in or about the factory of Smith?

267 A. For marking plugs?

X Int. 22. Yes; for marking plugs.

A. I never did, sir.

X Int. 23. Did you ever see a plate or plates about the moulds?

A. I never did, sir.

X Int. 24. How did it happen that you visited the factory so often, Mr. Hughes?

A. Well, sir, Mr. Smith frequently came after me to help him run the press down on the moulds and the finisher, and I frequently went over there to get tobacco. I got tobacco of Mr. Smith, and frequently me and him would go in the factory to sit down and talk.

X Int. 24½. Did you do this voluntarily or were you in the employ of Mr. Smith?

A. I was not in the employ of Mr. Smith; I done it voluntarily, sir.

X Int. 25. How often would they use the press; would they use it every day or once a week?

A. Well, sir, sometimes I would go in there twice a day to help him run the press down, then often he would want it run down lower, and I would go in again to help him run it lower; sometimes they would use it every day, and then again they would not use it perhaps for two or three days.

X Int. 26. While engaged in pressing the tobacco in the moulds or in the finisher would you know whether or not there was a plate in the moulds or finisher with a name thereon?

A. I would, sir. I handed him tobacco and helped him to take it out.

X Int. 27. Could you see whether or not there was such a plate while engaged in the press-work?

A. I think I could have seen it.

X Int. 28. Did Smith or Lee require any assistance or need it to remove the tobacco from the press or finisher?

A. I do not know whether it was necessary for them to have such assistance or not; they frequently asked me to assist them, and I did so.

X Int. 29. How long did Mr. Lee board with you, Mr. Hughes?

268 A. Mr. Lee came to my house either in June or July, 1875, and boarded with me until I left the hotel, which was some time in the fall or winter following.

X Int. 30. State whether or not he paid his board to you.

A. Part of it he did, and part of it he did not; I don't think there was much behind, not over thirty or thirty-five dollars.

X Int. 31. What time was it you commenced visiting the factory and assisting in the press-work; after Lee came here?

A. Well, sir, right away; I was in the factory though often before.

X Int. 32. How long did you continue to visit the factory after Lee was employed, as frequently as you have stated in your direct examination?

A. As long as I kept the hotel; all the time I remained at the hotel.

X Int. 33. Did you visit the factory and assist in the manufacture of all the tobacco, that is, the press-work therein, during all that time?

A. No, sir.

X Int. 34. Can you state, from your personal knowledge, that Smith did or did not use a plate, to impress his name on the tobacco manufactured by him in the summer or fall of 1875?

A. If he ever used it, I never saw it.

X Int. 35. What quantity of tobacco would he press at one time in the molds?

A. Well, sir, he generally filled the moulds up, but I don't know how much it took, nor how many pounds, to fill them up.

X Int. 36. How many moulds would he use at a time?

A. I don't remember how many he did use.

X Int. 37. How many moulds did he have in his factory?

A. I don't remember how many sets he has got; he has several; I never took the pains to count them.

X Int. 38. State what material his moulds are made of.

A. Well, sir, I think the moulds are made of sycamore timber, covered with zinc, to go on the tobacco; I don't think they are plated.

(Question last asked objected to, as not in cross-examination.)

269 X Int. 39. What was the size of the finisher?

A. I can't tell precisely, but suppose it was six or eight inches square on the inside.

X Int. 40. How many sets of moulds did Smith have?

(Question objected to on account of repetition.)

A. I do not know how many sets he has; I have looked at them, but do not recollect how many he has got.

X Int. 41. What is the size of his moulds?

A. He has different sizes; he makes fives—five to the pound, and fours—four to the pound.

X Int. 42. How many inches are they?

A. There was different lengths; I do not remember exactly what size—how many inches.

X Int. 43. Well, did he have any twelve-inch moulds?

A. If he did, I never saw them.

X Int. 44. Did he have any ten-inch moulds?

(Question objected to.)

A. I don't know the length of them; I never took pains to measure them.

X Int. 45. Well, did he have any four-inch moulds?

(Objected to.)

A. I do not know exactly the length of any of them; I never took the pains to measure them.

X Int. 46. Did he have any six-inch moulds?

A. I am just like I was before; I do not know exactly the length of any of them; I never took the pains to measure them.

X Int. 47. Had he any five-inch moulds?

A. Same reply; I do not know exactly the length of any of them; I never took the pains to measure them.

X Int. 48. You said in your examination-in-chief that you had often assisted in removing the tobacco from the moulds; now, about what was the size or length of the plugs of tobacco that you assisted in removing from the moulds?

A. It was not twelve inches, I know; it was ordinary-sized tobacco—what Smith called fours and fives; that is, four and five plugs to the pound; as near as I can remember, the plugs were from five to six inches in length; that is just as near as I can tell it.

270 X Int. 49. Did Smith manufacture more than one size of tobacco?

A. He manufactured what he called fours and fives; that is, plugs to the pound.

X Int. 50. Were the fours and fives the same length?

A. I do not remember whether they were or not, sir; one was thicker than the other.

X Int. 51. Did you ever examine any of his plugs of tobacco particularly, to see if there was any name printed thereon?

A. I have bought tobacco from him to use, and to sell in a store; I never did examine it to see whether his name was on it. I have cut the plugs to put in my pipe, and all that; but did not particularly examine it to see if his name was on it, or not.

X Int. 52. What kind of a press did Smith use?

A. It was iron or cast, a screw, which was run down by means of a lever.

X Int. 53. How many hands did it take to use that press in compressing the tobacco in the moulds?

A. Sometimes three, sometimes four, sometimes five or more, owing to how many hands he could get: with three the press was hard to run?

X Int. 54. Who would assist?

A. Well, different men that would be in town: he would call on men to assist him: I have seen Pete, Mr. Lee, and other men he could get around town: I myself, and I think I have seen you there, Mr. Davidson.

X Int. 55. About what quantity in pounds would be in each mould at one working of the press?

A. Do you mean by a mould, one plug? I told you while ago I did not know how many pounds it took to fill the moulds.

X Int. 56. Would he use all his moulds at one time?

A. Sometimes he would use all his moulds, sometimes he would not, and many would be setting around.

X Int. 57. Did Johnny or Willie Gadd work in the factory in the summer of 1875?

A. Will did; but whether Johnny did or not, I do not remember.

271 Redirect examination by complainants, by their solicitor:

R. Int. 58. State whether you had to attach, or threaten to attach, some of Mr. Lee's or his wife's furniture in order to get some of that portion of Lee's board bill, which was finally paid?

A. I told Mr. Lee that if he did not pay me his board bill I would attach his property. He went to his wife and told her, and she agreed to give me up her setter at twenty dollars, which was a part of it, and he told me that if I would let her go with the remainder of her property he would pay me the balance before he left; and then he slipped off in the night, still owing me thirty or thirty-five dollars.

R. Int. 59. State whether or not, when the tobacco was put in the finisher, there were smooth sheets of tin placed between the layers tobacco.

A. If there was I never saw them.

R. Int. 59½. Was it or not in the latter part of January, 1876, that you gave up the hotel?

A. It was either in the fall or the first part of the winter of the year 1875?

R. Int. 60. What did you do after you gave up the hotel?

A. Went to keeping drug store, selling drugs and groceries in Evening Shade, and stayed here about two years.

R. Int. 61. Did you continue to visit the factory occasionally after you quitted the hotel, up to the time the factory was closed?

A. I did, sir; I was one of the men chosen after the Government seized Smith's factory to value the factory, tobacco, and other property pertaining to it.

R. Int. 62. Do you know how many tobacco-moulds constitute a set?

A. No, sir, I do not.

JAMES B. HUGHES.

At this point the further taking of testimony for complainants, for final hearing in this cause, is, by consent of the parties, by their solicitors, postponed and adjourned until to-morrow, Thursday, the 13th day of May, 1880, at nine o'clock a. m., at the office of J. C. Yancy, in the town of Batesville, Independence county, Arkansas.

SAM. H. DAVIDSON,
Special Examiner.

274½ Thursday, May 13th, 1880, Batesville, Independence county, Arkansas.

Met pursuant to adjournment. Same parties present.

Thursday, May 13th, 1880, at 9 o'clock a. m.; met pursuant to adjournment at the office of J. C. Yancy, at the town of Batesville, Independence county, Arkansas.

CULLIN D. MCMILLAN, a witness of lawful age, being produced, sworn, and examined, under oath, testified:

First question by solicitor for complainants:

Int. 1. State your name, age, residence, and occupation.

A. My name is Cullin D. McMillan; my age is fifty-four years; I reside in Independence county, Arkansas; and am a farmer.

Int. 2. Please state where you resided and how you were engaged during the years of 1875 and 1876.

A. I resided in Sharp county, Arkansas, and was engaged in farming.

Int. 3. Whose farm were you managing and farming on?

A. The farm of T. Y. Huddleston, about two miles from Evening Shade.

Int. 4. Please state whether, during those two years, Mr. Huddleston supplied you any tobacco, either for your own use or for the hands upon the farm.

A. He did not.

Int. 5. Prior to 1875, had he occasionally supplied you with a caddy or two of tobacco for use on the farm?

(Objected to.)

A. In 1871 and 1872 I bought a caddy or two from him.

Int. 6. How many hands were employed on his farm outside of your family?

A. I sometimes hired a hand or two; I had six sons who worked upon the farm with me, though a part of the time my son Hugh worked in town, and was not engaged on the farm. That, however, was not in 1875 and 1876.

Int. 7. Please state whether Thomas Y. Huddleston is a man who is careful and accurate in his statements, or a man who is somewhat careless and unreliable?

272 (Objected to by respondents, by their solicitor.)

A. I hardly know how to answer that; he is a man that—the way I have always taken him; gets mad at, and bears malice, and then will say most anything at the time, though in his dealings I have always found him straight enough; I was on his farm seven years, and we never had but one little fuss in the time of it.

Int. 8. Have you always found him exact and correct in his statements of facts, or is he sometimes careless and inaccurate?

(Objected to by respondents.)

A. I have always found him exact and accurate, in a good humor, but when he bears malice against a man he will say anything, but I don't think he means it.

Int. 9. When he has once made a statement, will he stick to it, whether he is right or wrong?

(Objected to by respondents.)

A. He seems to be hard to convince; that is the view I take of him.

Cross-examination by J. L. Albernethy, Esq., solicitor for respondents:

X Int. 10. In speaking of malice on the part of Huddleston, when in anger, do you not mean that when in passion, or quarrel, he is simply vindictive and reckless in his assertions about the subject-matter which has occasioned his passions or anger?

A. Yes; I mean that when he gets mad at any person he bears malice towards him for some time, it takes him a good while to get over it.

X Int. 11. Towards those he likes or is on friendly terms with, is he not considered reasonable and truthful?

A. I have always found him so.

X Int. 12. What has been the extent of your dealings or business relations with Captain Huddleston?

A. Well, I rented his farm for six or seven years—seven years, and we did other trading and trafficking between us; that is considerable to do with each other.

X Int. 13. During those years in which you occupied his premises, and in the transaction of business above referred to, what was his general conduct, honorable or otherwise?

273 A. Honorable, so far as I know.

X Int. 14. Would you not regard any statement made by Huddleston, while testifying under oath, as reliable and correct, according to your best knowledge?

A. I could not object to it, of course. I could not object to it, because I would consider it reliable; of course, as I said before, that if he bears malice it would be otherwise, not under oath, but under oath he would be entirely reliable.

CULLIN D. McMILLAN.

HUGH H. McMILLAN, being duly sworn, deposes and says:

First question by ARTHUR STEM, Esq., solicitor for complainants:

Int. 1. State your name, age, residence, and occupation.

A. My name is Hugh H. McMillan; am thirty years old; I reside in Independence county, Arkansas; and am a farmer.

Int. 2. Please state whether you were engaged with your father on T. Y. Huddleston's farm, near Evening Shade, in the years 1875 and 1876.

A. Yes, sir; I was.

Int. 3. Please state whether, during that time, Mr. Huddleston furnished you or the other hands with tobacco, with any tobacco for use.

A. I do not think he did; I have no recollection of it.

Int. 4. Had he formerly done so, to some extent?

A. I believe he had.

Int. 5. What tobacco was used on the farm during those years?

A. I could not tell for certain; I bought my tobacco in Evening Shade, principally from the merchants. I suppose I got some Smith tobacco and some Springfield tobacco, and some from different factories; I never noticed the brand.

Int. 6. State whether or not, from your knowledge of Capt. Huddleston, you would consider him a man who was careless in his statements of fact, or sometimes somewhat careless.

(Objected to by respondents.)

A. I think at times he is somewhat careless; I don't hardly think he would be, though, under oath.

HUGH H. McMILLAN.

274 J. B. ATKINSON, being duly sworn, deposes and says, in answer to questions asked by ARTHUR STEM, Esq., solicitor for the complainants:

First question by complainants' solicitor:

Int. 1. Please state your name, age, residence, and occupation.

A. My name is J. B. Atkinson; my age is twenty-five years; my residence, Batesville, Independence county, Arkansas; and my occupation is saloon keeper and clerk at the Southern Hotel.

Int. 2. State whether or not you were ever in the employ of Mr. Smith in his tobacco factory at Evening Shade; and, if so, when?

A. Well, when I first worked for him it was in 1874, and the last time I worked for him was in 1879.

Int. 3. Were you in Evening Shade during any part of the year 1875; and, if so, what part of the year?

A. Well, sir, I left the 3d day of January, 1875, and went back there the 4th day of December.

Int. 4. State whether you were there during the following winter and spring.

A. Well, sir, I was there the balance of that year and also the following winter and spring.

Int. 5. Please state whether, during that winter, you were frequently in Mr. E. F. Smith's tobacco factory and noticed the work being done there.

A. Yes, sir, I was in there right often.

Int. 6. Did you know Rob't E. Lee, who was working for Mr. Smith?

A. Yes, sir.

Int. 7. Were you in the habit of going in the factory and sometimes assisting Mr. Lee or Mr. Smith in the press-work, or other work that they might be engaged on?

A. Well, sir, sometimes when they would be in a little press for work I would go with them into the press-room and assist them in doing the press-work or other work they might be engaged in.

Int. 8. State whether or not, during that time, or any other time, you saw any tobacco made by Mr. Smith, or in process of
275 manufacture, marked by letters or a name impressed in the surface of the plug.

A. I never did.

Int. 9. If tobacco had been so marked in Mr. Smith's factory during that time, would you, or not, have been likely to have seen or known of it?

(Objected to.)

A. Well, it seems like if there had been any there, I would have seen it.

Int. 10. When and how was Mr. Lee engaged when you last heard of him?

(Objected to.)

A. The last I heard of him he was keeping saloon in Newport, Arkansas.

Int. 11. Were you, or were you not, well acquainted with Mr. Lee, while he was in Evening Shade?

A. Yes, sir; I was; I was with him frequently.

Int. 12. Do you think he would have spoken to you of it if he had been marking tobacco in that way during that time?

(Objected to.)

A. Well, sir, I cannot say whether he would or not; but it looks

like, as I had been working in the factory a good deal, he would have said something about it.

Cross-examination by the respondents, by their solicitor:

X Int. 13. Do you, of your own personal knowledge, know that Smith manufactured tobacco, marked or unmarked, during the spring, summer, or autumn of 1875?

A. I do not.

X Int. 14. Do you know of your own personal knowledge that Lee kept a saloon at Newport?

A. No, sir; I heard it very often, though.

J. B. ATKINSON.

276 United States Circuit Court, Eastern District of Missouri. In Equity.

ANTON MILLER, CHRISTIAN WORLEY, *et al.*
vs.
THE LIGGETT & MYERS TOBACCO COMPANY, *et al.*, Respondents.

Proofs on the part of complainants, for final hearing, taken before Samuel H. Davidson, special examiner in the above-entitled cause, under the 67th rule in equity, as amended, under and pursuant to the foregoing notice, beginning on Saturday, May 15th, 1880, at the Stag's Head Hotel, in Walnut Ridge, Lawrence county, Arkansas.

Present: Arthur Stem, Esq., representing the complainants.

JOHN GADD, a witness of lawful age, being produced and sworn, and cautioned to tell the truth, the whole truth, and nothing but the truth, and being so sworn and cautioned, testified as follows:

First question by ARTHUR STEM, Esq., solicitor for complainants:

Int. 1. State your name, residence, and occupation.

A. My name is John B. Gadd; live at Walnut Ridge, Lawrence county, Arkansas, and am clerk in a dry goods store at this place.

Int. 2. State whether you resided in Evening Shade, Arkansas, in the year 1875, and whether during the summer of that year you were in the employ of E. F. Smith, a tobacco manufacturer of that place.

A. I did live there at that time, and was in the employ of said E. F. Smith.

277 Int. 3. State whether there was a Mr. R. E. Lee working for Mr. Smith at that time.

A. Yes, sir; there was.

Int. 4. How many hands did Mr. Smith employ at his factory?

A. He had one roller, Mr. Lee, and two or three stemmers.

Int. 5. State whether you sometimes assisted in the pressing-room in pressing tobacco, and saw it handled.

A. I sometimes did.

Int. 6. State whether or not you saw at that time, or at any other

time, any tobacco manufactured by Mr. Smith or Mr. Lee, marked with letters, or a name impressed on the plug?

A. I never did.

Int. 7. If any tobacco had been so marked by Mr. Smith, do you think you would have seen it?

A. I think I would.

Int. 8. State whether you ever heard of any tobacco so marked by Mr. Smith or Mr. Lee.

A. No, sir; I never did.

JOHN B. GADD.

WILLIAM HENRY GADD, of lawful age, being duly cautioned and sworn, deposes and says:

First question by ARTHUR STEM, Esq., counsel for complainants:

Int. 1. State your name, age, residence, and occupation.

A. Wm. H. Gadd; age, twenty-one years; Walnut Ridge, Arkansas; by occupation, farmer.

Int. 2. State where you resided in 1875.

A. Evening Shade, Arkansas.

Int. 3. How were you employed in the summer and fall of that year?

A. In E. F. Smith's tobacco factory, at Evening Shade.

Int. 4. Did you know an R. E. Lee, who was working for Mr. Smith at that time?

A. Yes, sir; I did.

Int. 5. What work did you do in the factory?

A. Well, I stemmed some; I helped run the press and pack the tobacco in the caddies.

278 Int. 6. State whether or not any tobacco manufactured by Mr. Smith or Mr. Lee during that time was marked with letters or a name impressed in the plug.

A. No, sir.

Int. 7. If Mr. Smith or Mr. Lee had marked tobacco with letters or a name pressed into the plug during that time would you, or would you not, have known it?

A. I would, I think, without any doubt; I must have seen it.

Int. 8. Did you ever hear of tobacco being marked in that way in Mr. Smith's factory?

A. No, sir.

Int. 9. Are you a brother of John D. Gadd?

A. Yes, sir.

Int. 10. Did he work for Mr. Smith while you did?

A. Part of the time.

Int. 11. How large a factory was Mr. Smith's?

A. It was a small concern. They only had one roller, Mr. Lee, and two or three stemmers. I don't think Mr. Smith knew much about the tobacco business.

WM. H. GADD.

Counsel for complainants here states that the counsel for defendants not having appeared, and it being six o'clock p. m., May 15th, 1880, these depositions are closed, but that the defendants may have the privilege of cross-examining the witnesses at any time before the time for taking testimony closes, by producing the witnesses at Cincinnati or St. Louis, and duly notifying complainants, or, by paying the expenses of witnesses and complainants' counsel, at any other place.

279 United States Circuit Court, Eastern District of Missouri. In Equity.

ANTON MILLER *et al.*

vs.

THE LIGGETT & MYERS TOBACCO COMPANY *et al.*

Depositions for complainants for final hearing, taken before Chas. D. Green, Jr., special examiner, May 24th and 25th, 1880, at No. 203 North Third street, St. Louis, Missouri.

Present: Messrs. Stem and Beattie, for complainants; S. S. Boyd, Esq., for defendants.

CHARLES EVANS.

Interrogatory 1. State your name, age, residence, and occupation.

Answer. My name is Charles Evans; I am 35 years of age; I reside in St. Louis, Missouri; I am captain of the salvage corps.

Int. 2. State whether you know Robert E. Lee, formerly of this city.

A. Yes, sir; I know him.

Int. 3. State whether said Lee ever worked under you; and, if so, when?

A. Yes, sir; he did; my candid opinion is that he went to work in April, 1876. I have not a very good memory for dates, but it seems to me that he left me about the last part of October, 1876, or thereabouts; I will not be positive; that is as near as I can recollect.

Int. 4. Do you know the reputation of this Robert E. Lee in the community among those with whom he worked and was associated with; I mean his reputation for truth and veracity?

280 A. Well, so far as I know, it is very bad.

Int. 5. What means have you for knowing his reputation for truth and veracity?

A. Well, from the fact that I never knew him to tell the truth when he could get a lie in.

Int. 6. I mean his reputation, or the opinion had of him in this respect by those with whom he worked and was associated. Do you know his reputation among such as associated with him for truth and veracity?

A. Well, no, I do not. I know that some of my men talked to me about him, and his reputation was not very good among them;

they gave me to understand that they could not believe in what he said—that they could not place any dependence in what he said.

Cross-examination by Mr. Boyd:

X Int. 1. How many men did you have employed during the time Lee was with you?

A. Seven.

X Int. 2. How many of these seven men did you ever hear speak of Lee's reputation for truth and veracity?

A. All seven of them.

X Int. 3. What was the occasion of their speaking to you in regard to it?

A. Well, Lee did not get along very well with the men, and I had occasion to call all of them up to the office to investigate the matter as to why they should have any trouble with him, and I found that none of them had anything particular against Lee, but that he would talk so much to them, and be so persistent in having his way with them, that they didn't believe whatever he told them, and would get angry with them if they laughed at him, or had any doubts as to the truth of what he was saying; so I told them to try and get along the best they could with him, and believe or not what he said to them, just as they pleased, so long as he did his duty.

X Int. 4. When, beside this occasion, was it that you heard these men speak in regard to Lee's truth and veracity?

280½ A. I didn't hear any more complaints from these men for some time after that, but my assistant reported him for being negligent in his duty and that he was drunk; he was also reported as coming in late at night. I called Lee to come up into the office. He came up, and denied both being intoxicated and coming in late at night. It was substantiated to me very conclusively that both the statements of my assistant were true; but I told Lee that I would let it pass that time, but if it occurred again, or if anything else occurred to lead me to believe he was not the man I wanted, I should discharge him.

X Int. 5. Now, what other time, beside these two, did you ever hear Lee's reputation for truth and veracity discussed?

A. Well, I have heard him spoken of frequently; not by my own men, because I don't allow my men to come to me to speak one about the other; but I have heard him spoken of by different men outside of my company, both while Lee was in my employ and after he was dismissed, as not being responsible in anything he said.

X Int. 6. What do you mean by "being responsible in anything he said;" you said in your last answer that you had heard that he was not responsible in anything he said?

A. Well, from the fact that everybody represented him as a man of no responsibility—a man that would talk about any one given thing as the wind would blow—didn't seem to really know what he was talking about; in fact I have understood from a great many that the man wasn't right; that he wasn't right; that he wasn't in his right mind; that he was flighty at times.

X Int. 7. What was the occasion of this first discussion between your men and yourself in regard to Lee?

A. Well, it came about, I believe, from talk in the house. The men would sit around, and have a good deal of leisure time and a good deal of time to talk, and he would be telling some long cock-and-bull story about his exploits down in Arkansas, and, as they claimed, he could never tell it twice alike, and it appeared to be the first trouble. One of them says, "Oh, Lee, don't tell us that any more; you have told it twenty-five times and told it different every time, and now I don't believe anything you say."

281 Well, Lee got ruffled a little about it, and they had some words in the house, and I had occasion to ask Lee what was the trouble, and he said the men were all down on him, and I called them up to the office to ascertain the cause of their being down on him, and I found they all agreed in saying that he would tell them so many yarns, and that he would try to make them believe it whether they wanted to or not; so that caused the trouble. So he got over that. I told them to listen to what he had to say and believe what they liked of it, and that it didn't make any difference to them, as long as Lee attended to his work properly, how many lies he told them, so that he didn't tell me any. So I got over that in that way, and it seemed that when any one said anything about him, or done anything that he didn't just like, that he would always get up a pitiful howl that they were trying to injure him. So that went on for some little time, and we had a fire on Third street; I don't remember the day, but I think that it was probably the 11th of October, if that is the time, he was dismissed. He was off that night. The fire was at Flesh & Mook's paint shop, and he came to me about eight o'clock in the evening, and he said that he had his wife at his brother's, or some place, and that he wanted to take her home.

Well, my time is for all the men to be in by 11 o'clock, but he said that he couldn't get back by 11, and I told him to go ahead and get back as soon as he could, and so he went off. We had two fires in the meantime. I was sleeping on the third floor and, between two and three o'clock I heard a rumpus down stairs, and I got up and dressed and went down stairs, and I found him and a man that was on watch—the man that is up all night—having a set-to, and I got them separated, and I ascertained the cause of it was that this young man that I had there on watch, that he was quarreling with; he was a very honest and upright man. I asked him what was the trouble, and he said that Lee came in and commenced to talk about Mayor Britton and Overstolz—I believe that they were about running—and he was talking politics, and this young man would say, "Yes, that is all right;" and from the fact of his agreeing with him he slapped this young fellow in the face, and the young fellow went for him, and I separated them and sent Lee up stairs and told Lee to go to bed. I saw that he was drunk and I didn't want to throw him out in the street in the morning. I went up stairs, and I

282 hadn't more than got my clothes off before they were at it again, and then I came down and seperated them, and Lee by this time had got pretty badly used up, and so I sent the other

fellow to bed this time, and told Lee "I guess you can stand the rest of this watch till daylight." I calculated then to let him go. I went to bed again, but Lee wasn't satisfied with staying down stairs, and they were at it again, and then I came down and toted Mr. Lee out of the house, and then I told him to go off somewhere, go to bed and come back the next day, and that I would give him his money. After he was out in the street I went out and told him: "You go up stairs to bed," and I took him in the house and he went to bed, and I told him, "Now, I don't want to come down any more to-night, but I want you to keep things quiet." I didn't want the man to stay out in the street; it was five o'clock. Well, we had an alarm of fire, and Lee was in bed, and I supposed that he understood that he was dismissed—we had an alarm of fire; it broke out again at Flesh & Mook's paint shop, and Lee came down and the wagon went out. I keep three extinguishers, and they put two in the wagon and left one in the corner for a reserve in case there is any fire in the neighborhood. Well, Lee didn't get down quick enough to go out with the wagon, so he fixed this third Babcock fire-extinguisher on his back and he starts down Fourth street to go to the fire, and it was not a great while before a policeman found him at the Planter's House. He was crazy, didn't know what he was about; and he brought him to me and said: "Here is one of your men that I have found, and he don't know what he is about," well, I told him to take him down and lock him up, that he was no man of mine. "Well," said he, "I found him at the Planter's House with this Babcock fire-extinguisher on his back, and he was making a terrible rumpus." Well, I told him to take him away. I thought this was rather a funny situation for a member of the salvage corps to be in, for I am a cold water man myself.

Mr. Boyd: Well, that is all.

Witness: Well, I am sorry you have got through with me so quick, because the sweetest of this thing is to come yet. I did want to tell about the scoundrel's treatment of Givens, and all that, but yet, I don't hold any grudge against him.

(Signature waived.)

983 William Kemper.

A. My name is William Kemper; I am a fireman; I reside at 3716 North Eleventh street; and I am 44 years old.

Int. 2. Do you know Robert E. Lee, formerly of this city, and in the employment of the fire department and salvage corps?

A. Yes, sir.

Int. 3. How long have you known him?

A. I have known Mr. Lee about fourteen or fifteen years.

Int. 4. Do you know his reputation in this community for truth and veracity?

A. Yes, sir.

Int. 5. What is that reputation?

A. His reputation is bad.

Cross-examination by Mr. BOYD:

X Int. 6. Who have you heard speak of his reputation for truth and veracity?

A. Well, sir, I can't mention nary one in particular, but I have heard a great many of them talking about Mr. Lee, and about his truthfulness and character—a great many people.

X Int. 7. Can you give the name of a single one?

A. Well, I may, if I sit down and study awhile, but I haven't had no association with him for the last three or four years, probably; I can't do it just now—I can't think.

X Int. 8. In the last three or four years you haven't heard his reputation for truth and veracity discussed?

A. Not so much as formerly; it is several years ago.

X Int. 9. Have you at all?

A. Oh, yes; I have heard it once in a while—what he has been doing, etc.

X Int. 10. By whom have you heard it discussed?

A. Oh, by general talk from the people that knows him and my acquaintances, and his acquaintances, and such things as that.

X Int. 11. Name one that you have heard speak of his reputation for truth and veracity in the last three or four years.

A. Well, I can't, actually; I can't think now; I can't study, because there is so many people; I can't think of them.

281 X Int. 12. What was the occasion of his reputation in that respect being discussed; what called it out?

A. Well, it is this much: That he is from one place to another, and when a lot of men come together in that way they will talk one thing and another. He is a little while at one place, and then again he is at some place else, and then again he is somewhere else. He was on the police a while, and first he was in the tobacco business a while, and then he was on the Fifth street road a while, and then he was in the fire department, and that was just the way he done, from one place to another. It was generally talked all around that he wasn't much of a man, but I can't mention any one individual now.

X Int. 13. Well, then, the discussion that you have had in—to Lee has been in regard to his responsibility as a business man, hasn't it.

A. Well, in former years he has been in the tobacco business a good deal, I believe, and other places; I know him; he has been in and he has been on the Fifth street road for a while, and he has been in the fire department, and I believe he was with the Mound Fire Company; when he was discharged out of the house I am in I took his place there; he was discharged out of that house for drunkeness and disturbance, and all such things; for telling lies, and all such things as that, and his character was such that the men wouldn't believe him under any circumstances.

X Int. 14. Now, will you tell me when you ever heard his reputation for truth and veracity discussed by anybody?

A. Well, we have talked about that in the engine-house several times. For instance, Mr. Stewart, the engineer, and Bruening, the

fireman, sometimes would sit down and talk matters over, and they all came to the conclusion that they wouldn't believe what he said—that he was not a truthful man.

X Int. 15. Why wouldn't they believe what he said?

A. Because they couldn't depend on him.

X Int. 16. Why couldn't you depend on him?

A. Because he will not tell the truth; that is just the reason.

X Int. 17. Under what circumstances do you know that he will not tell the truth; under what circumstances did they say that he would not tell the truth?

285 A. Well, there is a good many circumstances, as far as that is concerned. Now, while he was in that house, he has had several fights in the Hyde Park Veto engine-house, and several times he had a fight there; talking about the men and one thing and another like that—raising a general disturbance.

X Int. 18. Then, Lee was a quarrelsome, meddlesome man, was he?

A. He is; yes.

X Int. 19. He had trouble with everybody he associated with?

A. Generally; he is a drinking man, and every time he gets drunk he raises the mischief, and wants to fight and raise a fuss.

X Int. 20. Did he ever, in any place where he was employed, as far as you know, leave the men with whom he was engaged friends to him, or did they all become his enemies?

A. No, sir, he has not; he never left there with a friend to him.

X Int. 21. They were all his enemies when he went away?

A. Yes, every time he left there were enemies against him.

(Signature waived.)

NEIL STEWART.

Int. 1. What your name, age, residence, and occupation.

A. My name is Neil Stewart; I am a bell-hanger; 50 years old; and reside in St. Louis.

Int. 2. State whether or not you were subpœnaed to appear here against your will?

A. Yes, sir; I was subpœnaed.

Int. 3. Do you know Robt E. Lee?

A. Yes, sir.

Int. 4. How long have you known him?

A. About twenty years.

Int. 5. Do you know his reputation in this community for truth and veracity?

A. Yes, sir.

Int. 6. What is his reputation?

A. It is not very good.

286 Cross-examination by Mr. BOYD:

X Int. 7. Who have you heard discuss Lee's reputation for truth and veracity?

A. I have heard dozens and dozens.

X Int. 8. Name one or two of the dozens and dozens.

A. Well, there is one, Mr. Buckey, foreman at Ennis', the printer.

X Int. 9. Who else?

A. Well, everybody that knew him; in fact, most everybody—I have heard it discussed, because his actions would bring it up in conversation. Of course, he would be discussed when we were together.

X Int. 10. What was the occasion that caused it to be discussed by Mr. Buckey?

A. Well, he discussed it; then he used to get drunk and raise fusses.

X Int. 11. Who, Buckey used to get drunk and raise fusses?

A. No, sir; Mr. Lee; I am talking about Mr. Lee, not Buckey.

X Int. 12. Did Lee use to get drunk with Mr. Buckey?

A. I don't know whether he got drunk with him or not.

X Int. 13. How did Buckey know about his being drunk?

A. Buckey at that time lived with me; his family were out on a farm in the country, and he lived with me, and Lee lived next door, and used to see him often.

X Int. 14. How did Buckey know that Lee was drunk at the time that he talked to you about his reputation for truth and veracity?

A. He would see him—see how he acted.

X Int. 15. Where would he see him?

A. Right around the house, and I suppose over town, too; right around the house.

X Int. 16. Was Lee ever noisy around the house when he was drunk?

A. Yes.

X Int. 17. Never created a disturbance there, did he?

A. Yes.

287 X Int. 18. Did he create a disturbance there so as to disturb you when he was drunk?

A. Yes.

X Int. 19. How many times did he do that?

A. I can't tell you.

X Int. 20. Did he do it more than once?

A. Yes, sir.

X Int. 21. How much did he disturb you when he was drunk?

A. How much, he didn't disturb only me, but the whole neighborhood.

X Int. 22. How did he disturb you and your family?

A. By his noise, and talking and abuse.

X Int. 22½. Used to abuse your family?

A. Yes.

X Int. 23. How did he abuse them?

A. By his vile tongue.

X Int. 24. Did you ever remonstrate with him for abusing them?

A. Yes, sir.

X Int. 25. How often?

A. Innumerably.

X Int. 26. Would he always yield kindly to your remonstrances?

A. He would yield when I would talk to him when he was sober, and he would be all right, and would apparently be sorry for it, but when he took it into his head again to repeat the dose he would repeat the same thing.

X Int. 27. How long did he live by you?

A. Several years.

X Int. 28. When?

A. Oh, about—I can't tell you—somewhere between 1870 and 1876 and 1877, perhaps before that.

X Int. 29. How long did he live next to you?

A. He lived for years around there.

X Int. 30. Six years.

A. Next to me, and in that immediate neighborhood.

X Int. 31. For six years?

288. A. Yes, and more than that.

X Int. 32. Did he ever disturb Mr. Buckey?

A. I do not know; Mr. Buckey was only a boarder; Mr. Buckey used to get disgusted with his talking.

X Int. 33. He never troubled or interfered with Buckey, did he?

A. Only what I was telling you about—blowing and gassing and exaggerating.

X Int. 34. Then, he was a great blower, and a great gasser, and a great exaggerator?

A. Yes, sir.

X Int. 35. Used to tell a great many of what are called "fish stories," didn't he?

A. Yes, sir.

X Int. 36. Big, long yarns?

A. Yes, sir.

(Signature waived.)

JOHN A. WARDEN, Jr.

Int. 1. What is your name, age, residence, and occupation?

A. My name is John A. Warden, Jr.; age, 40; occupation, fireman; residence, St. Louis, Mo.

Int. 2. State whether you know Robert E. Lee, formerly of St. Louis.

A. Yes.

Int. 3. How long have you known him?

A. I can't say exactly; it is a long time; it may have been twenty or twenty-five years; I don't know exactly.

Int. 4. Do you know his reputation for truth and veracity among those with whom he generally associated here?

A. Well, I have heard persons speak ill of him; I never heard one speak good of him.

Int. 5. As far as you know, what is his reputation for truth and veracity—good or bad?

A. It is bad.

Cross-examination by Mr. BOYLE.

X Int. 6. How do you know that his reputation is bad?

289 A. I have heard men speak about it.

X Int. 7. Who have you heard speak about his reputation for truth and veracity?

A. There is only one man that I can recollect now; it is twelve years ago, I guess, since I heard anybody speak about him; that man's name is James King.

Redirect examination by Mr. STEM:

R. Int. 8. Haven't you ever heard Thomas Rucker speak of him?

(Objected to, as leading.)

A. Yes; I had forgotten; I heard him.

R. Int. 9. Have you ever heard any fireman besides King speak of him?

(Objected to, as not growing out of the cross-examination, and for the reason that the witness has already distinctly stated that he never heard anybody, except one man, and that is ten or twelve years ago, speak of the reputation of Lee for truth and veracity, and counsel objects to any further direct examination on this point.)

A. I don't recollect of any one in particular.

R. Int. 10. How recently did you hear Thomas Rucker speak of him?

A. Last Sunday week.

R. Int. 11. What, in fact, was it that he said?

(Objected to, as calling for hearsay testimony, Mr. Rucker being the proper witness on that point.)

A. I don't recollect exactly what it was; I didn't pay much attention to it. He was saying it, and he had a very poor opinion of him, but I can't tell you the words he said. He didn't like him. I don't know the words he said.

Recross-examination by Mr. BOYD:

Counsel for respondent, without waiving the objection heretofore made, proceeds to further cross-examine, as follows:

R. X Int. 12. Who is Thomas Rucker?

A. Fireman of Engine Company No. 15.

R. X Int. 13. The company to which you belong?

A. No, sir.

290 R. R. X Int. 14. What company do you belong to?

A. No. 4.

R. X Int. 15. Did you ever serve in an engine company with Lee?

A. No, sir.

R. X Int. 16. Did you know him when he was connected with the fire department?

A. I knew him by sight, that is all; never had any words with him in my life; I have known him by sight since I was a boy.

R. X Int. 17. You never spoke to him in your life?

A. No, sir.

R. X Int. 18. How came you to talk with Rucker about him?

A. A man named Charles Bennett, a detective, came to our house two or three weeks ago, or last week, some time, and he got to talking to me about Lee, and I mentioned it to Rucker, and that is how he came to speak about it.

R. X Int. 19. How came Bennett to come and see you?

A. I don't know.

R. X Int. 20. What was it that Bennett talked to you about?

A. He asked me if I knew Robert E. Lee.

R. X Int. 21. Was that all?

A. He asked me if I knew anybody that knew him by reputation.

R. X Int. 22. Is that all?

A. That is about the substance of what he asked me.

R. X Int. 23. What did you tell him?

A. I told him I didn't know much about him.

R. X Int. 24. Did you tell him anybody that would know about him?

A. I told him if he went to the Eight's, where he had been, probably he would find some one there.

R. X Int. 25. By Eight's you mean the engine Co.?

A. Yes, sir.

R. X Int. 26. Did you go to see Rucker after that?

A. No, sir; it was Buckey's day off, and he came on a visit to me.

R. X Int. 27. What did he have to say when he came to see you?

291 A. He came in to talk to me about a fishing excursion; nothing in connection with this case.

R. X Int. 28. He didn't mention Lee?

A. Not until I spoke to him about him.

(Signature waived.)

292 MAURICE LANG.

Int. 1. State your name, age, residence, and occupation.

A. My name is Maurice Lang; age, 38; occupation, tobacconist, reside in St. Louis; have lived here for thirty years.

Int. 2. State whether or not you know Boyce Bros., tobacconists, of St. Louis?

A. Yes, sir, I know the parties; I have worked for them.

Int. 3. How long did you work [for] them?

A. Well, for some four or five years; not steady, maybe, but off and on.

Int. 4. What sort of work did you do for them?

A. Well, I had work at the bench, what we call rolling; and I have worked in the press-room.

Int. 5. What sort of work did you do in the press-room?

293 A. Pressing tobacco.

Int. 6. How long were you engaged in that kind of work?

A. Well, about a year I expect; I wouldn't say a year, but it may be some couple of days in a week for a year; for very near a year I worked at that kind of business.

Int. 7. Did you see a mould they had there with the word "Blackberry" on one of the blocks?

A. Yes, sir.

Int. 8. What size work did they make with that mould?

A. Well, six-inch work.

Int. 9. Now, after pressing work of that character in the mould, what did they do with it?

A. Packed them in the finisher; after we had pressed out the work we packed it in an iron finisher.

Int. 10. Did you ever see the word "Blackberry" on any of that tobacco?

A. Never noticed it, sir; never noticed it afterwards; never paid any particular attention to the mark at all; after it was packed in the caddy I never noticed it.

Int. 11. Did you know that tobacco to be packed in any particular shape in the caddies?

A. No, sir; I have never seen it; I have packed away tobacco of that kind, and I never knew it was packed in any particular shape.

Int. 12. Did you hear anything said about that mark when you were there?

A. Never did, sir.

Int. 13. Did you ever have your attention called to it in any particular way?

A. No, sir, never to my recollection; I don't remember of anything ever being spoken about it.

Int. 14. Was Reeves Brothers in the habit of turning that character of work in the mould?

WITNESS: Turning it?

COUNSEL: Yes.

W. Oh, no; not that kind of work; that kind of work is never turned; it is only a nine-inch work that they gen-
294 erally, in the old process, would always turn over; that is, bright work—nine-inch and twelve-inch.

Int. 15. Was that, or not, before finishers were introduced?

A. Well, no; iron finishers have been used ever since I recollect of working in the factory.

Int. 16. State whether or not, after that work had gone through the finishers, you ever saw this word "Blackberry" on any of the lumps.

A. I never paid any attention to it, sir; never noticed it, in fact; not of my own knowledge; never paid any attention to it afterwards.

Int. 17. State whether or not you ever assisted in packing that class of tobacco in caddies.

A. Yes, sir; I have packed tobacco of all kinds.

Cross-examination by Mr. Boyle.

X Int. 1. What is your business now?

A. I am a tobacconist, sir, at present.

X Int. 2. With whom?

A. M. M. McCabe. (Should be Henry McCabe, I think.—Greene.)

X Int. 3. When did you go to Boyce Brothers' factory?

A. Well, I could not state exactly what year it was. They had been doing business on Washington avenue at that time. I don't remember now; it has been, I guess, some ten years ago.

X Int. 4. How long did you stay with them?

A. Some four or five years.

X Int. 5. What were your duties there, what were you employed for?

A. When I first went to work there, sir, I went to work working piece work, rolling.

X Int. 6. How long did you keep at rolling?

A. Some couple of years.

X Int. 7. After you gave up rolling, what did you do?

A. Well, then I was employed by them to run a machine; they had done away with our work, and got a machine.

X Int. 8. Plug machine?

A. Yes, sir.

295 X Int. 9. Where was that plug machine—on the same floor that the rollers were?

A. Same floor.

X Int. 10. How long did you run that machine?

A. Run that for about five or six months.

X Int. 11. Well, after you got done running that, then what did you do?

A. Done nothing; I went a-pressing, then.

X Int. 12. When you went a-pressing, is that doing nothing?

A. Oh, no, sir; I don't say that. I went into work into the press-room; he had hired me there for nine dollars a week; I was supposed to do all kinds of work around the factory.

X Int. 13. What part did you take in the press-room?

A. Pressing; pressing and packing; and, as a general thing, doing everything.

X Int. 14. What part of the pressing did you take care of, that in the moulds or in the finisher?

A. Yes, sir, all; packing, and putting the work in the moulds, and taking them out and putting them in the finisher; putting them in the caddy, also.

X Int. 15. How long did you do that?

A. Well, as long as they had any work for me to do. I couldn't tell exactly how long I done it; I done it for a certain length of time, and I could not state how long it was.

X Int. 16. Were you at that a year?

A. Oh, no, sir; oh, no, not a year.

X Int. 17. You say you saw there a mould with the word "Blackberry" on it; what did they do with that mould?

A. What did they do with it?

X Int. 17½. Yes; press tobacco with it?

A. Pressed tobacco with it—yes, sir.

X Int. 18. Well, how often did they press tobacco with that; every time they run the set?

A. Yes, sir; one set.

X Int. 19. Every time they used the set to which that belonged they used that mould?

A. They used that block; yes, sir.

296 X Int. 20. How often did they make six-inch work?

A. Well, they may not use that set; in fact, they may use that set a couple of days in the week, and may not use it again for a month or two months; depends, you know, on what kind of work they want to turn out.

X Int. 21. They use that set just as their orders call for six-inch work?

A. Yes, sir; black work is what they generally turn out.

X Int. 22. Do you mean that you can't make bright tobacco six inch?

A. Why certainly; oh, yes, yes.

X Int. 23. You can make bright tobacco six inch just as well as nine or twelve inch, can't you?

A. Just the same, I suppose, if it is put through the same process; can't make bright work out of black work.

X Int. 24. You can make bright work in six-inch moulds just as well as nine or twelve inch, can't you?

A. Yes; certainly.

X Int. 25. Do you say they never made any bright work off from six-inch moulds?

A. Not to my knowledge; I wouldn't say that, but I say that it can be done; I don't want to go and say I have seen it done, for I don't recollect whether it has been or not.

X Int. 26. Then you don't remember whether they made any bright work with these six-inch moulds?

A. No, sir; I couldn't say that, but it can be done, certainly.

(Signature waived.)

FREDERICK STEWART.

Int. 1. State your name, age, residence, and occupation.

A. Frederick Stewart; residence, 1212 Salisbury street; occupation, engineer in the fire department.

Int. 2. State whether you were summoned to appear here against your will?

A. I was subpœnaed.

Int. 3. Do you know Robert E. Lee?

297 A. I do.

Int. 4. How long have you known him?

A. I can't say positively; fourteen years.

Int. 5. Do you know his reputation, in the community and among those he associates with, for truth and veracity?

A. I do, from hearsay only.

Int. 6. What is that reputation?

A. It is rather bad.

Cross-examination by Mr. BOYD:

X Int. 1. Who have you heard speak of his reputation for truth and veracity.

A. Various persons; I don't suppose I could remember any particular names; it is a great many years ago since I have heard any conversation about him.

X Int. 2. How many years is it since you have heard any conversation about him, one way or another?

A. Ten or twelve years.

(Signature waived.)

298 JOHN W. BAME.

Int. 1. State your name, age, residence, and occupation.

A. John W. Bame; 115 South Fifth street; occupation, fire department; 51 years.

Int. 2. What position do you occupy in the fire department?

A. Assistant chief.

Int. 3. State whether you know Robert E. Lee, formerly of this city.

A. I don't know that it is Robert E.—Bob Lee that I knew.

Int. How long have you known said Lee.

A. I think I got acquainted with him in the year 1876—1866, perhaps, or 1867.

Int. 5. Do you know his reputation in this community, among those with whom he associates, for truth and veracity?

A. I never had any business with him that I know of; I know from heatsay.

Int. 6. So far as you know his reputation from hearsay, and as to truth and veracity, what is it.

A. Well, it is a little mixed—not very good.

Cross-examination by Mr. BOYD:

X Int. 1. How much have you seen of Lee since 1867?

A. I haven't seen a great deal of him; I didn't see him for a long time until within about a year or a year and a half.

X Int. 2. How many times before your last seeing him had you seen him since 1867?

A. I couldn't state positively; I saw him off and on.

X Int. 3. What was the occasion of your seeing him?

A. Merely by chance; met him.

X Int. 4. Who have you heard talk of his reputation for truth and veracity?

299 A. I couldn't remember exactly who; we would get in conversation sometimes, speaking about one thing or another.

X Int. 5. Can you name any one?

A. I don't know that I could just now.

X Int. 6. What was the occasion of their speaking about his reputation for truth and veracity?

A. I recollect a remark made in front of this door at one time, when he was going on the car; he was conductor on this line, the

Fifth street line. I can't tell who it was, but some one made the remark: "Bob must have got honest; he has got to be conductor on the line."

X Int. 7. What else did you ever hear in regard to his reputation for truth and veracity?

A. I cannot call anything special to mind just now; I never paid any particular attention to it.

X Int. 8. How many times do you think you ever heard anything said about him, one way or the other? Do you remember any time except this once?

A. You mean lately?

X Int. 9. At any time.

A. I have heard it frequently spoken of, when we would be speaking about him, and his brother also.

X Int. 10. Which brother?

A. One of Bob's brothers; Holly, I believe; one that was killed here some time ago.

X Int. 11. How lately have you heard it discussed?

A. Within a year or two; perhaps three years.

X Int. 12. What was the occasion of it being discussed?

A. Well, ordinary conversation, talking about one thing or another.

X Int. 13. What was said?

A. I could not remember, word for word, what was said.

X Int. 14. What was the substance of conversation, and what was said generally?

A. Once, speaking about Holly, some one had heard that Holly was in the penitentiary in Texas, and the remark was made that it wouldn't hurt if the balance of the family were there—something to that effect.

300 X Int. 15. Has he any other brother except Holly?

A. I think he has; Captain Bill Lee, I believe, is his brother.

X Int. 16. Did they mean it wouldn't hurt if Captain Lee was in the penitentiary?

A. I don't know whether they did or not.

X Int. 17. Do you know how long Captain Lee has been on the force here?

A. I don't know exactly; he has been on it a good long time.

X Int. 18. He has been chief one time, has he not?

A. Yes.

X Int. 19. He is still captain of the most important precinct in the city?

A. Yes, sir.

X Int. 20. When the chief leaves he is acting chief, isn't he?

A. That I don't know anything about.

(Objected to, as irrelevant.)

X Int. 21. Is there any other thing you remember definitely that was ever said about Robert E. Lee, except the time when a man said that, seeing him conductor on a car, that "Bob must have got hon-

est," and then at another time, when somebody remarked about Holly Lee being in the penitentiary, "It would not be any harm if the rest of the family were there,"—any other thing you heard said about Lee's reputation for truth and veracity?

A. Not that I remember of.

X Int. 22. Who is president of the Fifth-street line railroad; do you know?

A. I could not tell that.

(Signature waived.)

301 United States Circuit Court, Eastern District of Missouri

ANTON MILLER, CHRISTIAN WORLEY, and JOHN FINZER & BROS.
vs.
THE LIGGETT & MYERS TOBACCO COMPANY. } In Equity. No. 1583.

Examination of witnesses by the complainants before J. F. Twohig, special examiner, at the office of Hatch & Stem, Pike's Building, Cincinnati, Ohio, on Wednesday, the 26th day of May, 1880, the examination being held by consent, without formal notice.

Present: James A. Beattie, Esq., and John E. Hatch, for complainants, and S. S. Boyd, Esq., of St. Louis, for defendants.

DANIEL MCCALLAY, a witness produced on behalf of complainants, having been first duly sworn, deposes and says, in answer to interrogatories propounded by J. E. HATCH, Esq., for complainants, as follows, to wit:

Interrogatory 1. State your name, age, residence, and occupation.

Answer. My name is Daniel McCallay; age, 40; tobacco manufacturer, as partner of Wilson & McCallay; place of residence, Middletown, Ohio.

Int. 2. How long have you been engaged in the business of manufacturing tobacco?

A. Not quite three years; that is, I have been connected with the business.

302 Int. 3. What experience have you had during that time; that is, what kind of tobacco have you made?

A. We have made all kinds of plug tobacco, I guess.

Int. 4. And to what extent?

A. Well, we manufacture—do you mean quantity?

Int. 5. Well, not necessarily as to quantity, but to what extent have you manufactured?

A. Well, last year we made over a million and a half, I know.

Int. 6. Large manufacturers?

A. Yes, sir.

Int. 7. Now, as a manufacturer of plug tobacco, please state whether or not, in your opinion, there is any advantage in applying to the plug an identifying mark to identify the manufacturer; and, if so, state what that advantage is.

A. Why, the advantage is——

Int. 7. First, is there an advantage?

A. There is an advantage; yes, sir.

Int. 8. Well, state what it is.

A. So that the consumer may know that he is getting the genuine article.

Int. 9. What is the advantage of that?

A. Well, if I am making a superior brand of tobacco, I would like to have the consumer know that he is getting that, and not something else that is inferior.

Int. 10. To what extent have tobacco manufacturers, during the last two or three years, identified their plug tobacco by identifying marks?

A. Well, to a very great extent; all prominent manufacturers are doing it.

Int. 11. What effect does marking your tobacco by identifying marks now have upon the trade, with reference to making sales?

A. Well, any good tobacco, tobacco that has a reputation, it enables one to make sales; quite the reverse, I should think, on inferior tobacco; at least, that would be my idea.

Int. 12. What would be the effect of attempting to make sales without some identifying mark; that is, as to price? Now,
303 how would the price that you would be able to get compare with the price that you would get if the tobacco was identified?

A. I don't think it would be possible to get, you might say, the market price for tobacco that is not identified in some way.

Int. 13. Are you acquainted with what is known in the trade as the "Miller & Worley process" of making plug tobacco, by first pressing the tobacco in the moulds and then marking and finishing it in the finisher, between metal plates, with raised devices upon the plates?

A. I am; yes, sir.

Int. 14. What advantage is there, in your opinion, if any, in having the tobacco finished and marked in the finisher, between the metal plates, with raised devices upon the plates?

A. The advantage is that it goes from the finisher to the package without the expense of handling; comes out more perfect.

Int. 15. Comes out what?

A. Comes out more perfect to the trade; turns it out more perfect.

Int. 16. Does this perfection apply as well to the finish as to the mark, or to both, or to only one?

A. Well, I think it adds to the finish; to the general appearance, you might say.

Int. 17. What, in your opinion as a tobacco manufacturer, would be the effect of attempting to mark hand-made plugs by putting the same in an ordinary wooden frame or mould, with the name desired to be impressed upon the plugs fixed in raised devices upon the follow-block, and then giving the plug one pressure in the mould in that way?

A. I would not think the result could be so successfully accomplished.

Int. 18. Why?

A. You now speak of hand-made goods?

Int. 19. I now speak of hand-made goods.

A. Well, for the reason that the plug is round, and it would be very hard to get a good, correct impression.

Int. 20. Do you know whether or not some of the manufacturers solidify the tobacco even after putting into the mould; and, if so, how do they do it?

304 A. Some do it by the machine that compresses the leaf, and others, after the plug is made, put it into boxes and compress it by hydraulic pressure or screw pressure, both ways, in order to solidify.

Int. 21. And after a plug is thus solidified under hydraulic pressure, then, as I understand you, they put on the wrapper?

A. They can; yes, sir; or after the wrapper is put on, either way.

Int. 22. And then, after it is thus wrapped and solidified, they press it in the moulds; is that correct?

A. Yes, sir.

Int. 23. How is that tobacco usually finished?

A. Well, after it comes from the moulds it is put into finishers between metal plates.

Int. 24. With reference to the matter of the amount of handling that would be required, what would be the difference in attempting to mark tobacco by a device in the mould, or attempting to mark it with raised devices on the finish plates in the finisher? I speak now simply with reference to the matter of expense of handling.

A. There would be more expense attached to marking it in the moulds than there would be in marking it in finishers.

Int. 25. Why?

A. From the fact that the moulds would have to be prepared for marking, and the plates would either have to be separate or fastened on to the moulds, and if fastened on to the moulds there would be some trouble in keeping them clean and keeping in repair. The weight of them would cause more or less wear and tear.

Int. 26. But if they were separate, how about the trouble of handling?

A. There would be considerably more that way than the other.

Int. 27. How about the finish that the tobacco would receive? Supposing now that it were possible to mark it in the moulds, and that it were then packed directly in the caddy by one method, or by another method, if it was marked in the finisher between

305 Smith plates with raised devices, and then put into the caddy, in which case would the tobacco receive the better finish, and why?

A. Well, the tobacco that was marked in the finisher would be the best finished tobacco, of course.

Int. 27. You say "of course;" just explain why.

A. From the fact, that after it had received the pressure in the moulds, that it would then be in better condition to receive the next impression, and would be more lasting; it would have a better finish, better gloss, make a better general appearance.

Int. 28. Would this finish, or gloss, or appearance, be a matter that affects tobacco in the trade?

A. Well, it adds to the workmanship.

Int. 29. Don't these little details of the manufacture add considerably to the salable quality of the tobacco? Do they, or do they not, assist in the sale of the goods?

A. It is necessary, now-days, to have all the improvements we know of, and to have our goods just as nice as we know how.

Int. 30. The competition is such?

A. The competition is such in the business; yes, sir.

Int. 31. I now show you a plate (handing plate to witness), marked "Defendant's Exhibit, Smith Plate." I ask you, supposing that a party had a plate like that, with letters screwed to it, having sharp edges such as these letters have, and used, or attempted to use, that plate to mark hand-made goods in the ordinary mould, by putting that plate above the lump, after it was made by hand in the mould, and before the follow-block came down upon it, what, in your opinion, would be the effect of attempting to mark tobacco that way?

A. I think it would leave an impression, but, so far as the finish is concerned, I would attach much value to it; that is, on a hand-made lump, now understand.

Int. 32. And what would be the effect with reference to cutting the wrapper, in your opinion: would it, or would it not, cut the wrapper?

A. I should think it would cut the wrapper; it would bleed; I think that these sharp edges, coming down on the soft, round lump——

306 Int. 33. What do you say the effect would be of these sharp edges coming down?

A. I think it would cut the wrapper, and it would bleed; that is a term that I use. For instance, we may mark a plug, and our tins may be sharp, and in the finisher at the time, and if it bleeds—that is the expression that we use—it is not a success.

Int. 34. What injury does bleeding do?

A. It prevents a smooth finish.

Int. 35. How does it effect the tendency of the lumps to stick together?

A. It would make them stick.

Int. 36. Just state what disadvantage the fact of the plugs sticking together in the caddy has with reference to the appearance when taken out.

A. It would not be as salable—would not be as merchantable.

Int. 37. What would be the effect of the sticking together, with reference to injuring the wrapper?

A. The wrapper would pull loose from one plug on to the other; the finish would be injured.

Cross-examination by Mr. Boyd.

X Int. 37½. Suppose that Smith plate were used on dipped ma-

chine-made plugs, and the mark put upon it in the mould, how would that make it as to its legibility?

A. How is that—what did you say?

X Int. 38. How would it be as to legibility? Would it be legible?

A. Yes, sir; I should think it would.

X Int. 39. Then whether or not that Smith plate would make a good mark upon plug-tobacco, would depend very much upon the order or condition of the tobacco at the time it was placed in the mould, would it not?

A. Yes, sir.

X Int. 40. If the tobacco was in proper order and proper condition when it goes into the mould have you any doubt that the Smith plate would make a plain, legible mark upon the plug when it came from the mould?

307 A. I want to qualify my answer: If it was hand-made goods—what might be called proper order for hand-made plug, and machine plug, is entirely two different things. It might be in proper order for hand-made goods, and not be capable of making a perfect impression; but if it is in perfect order for machine-made plug, it would.

X Int. 41. Did you ever try to make plug-tobacco in a wooden mould with the marking device attached to the follower?

A. Not exactly; I have tried to mark plug-tobacco in moulds not attached to the follower.

X Int. 42. What sort of a marking-device do you use?

A. Use coin, or the wire.

X Int. 43. What was the result?

A. We had a perfect impression, almost, when it came from the moulds.

X Int. 44. What sort of a wire did you use?

A. Ordinary wire.

X Int. 45. How did you press it in the mould when you made that experiment?

A. Just laid it on the plug.

X Int. 46. I mean as to time, and as to amount of pressure.

A. Oh, well, we use the ordinary pressure, and it remained there, probably an hour and a half, or two hours.

X Int. 47. Were they wooden moulds?

A. No, sir; they were not.

X Int. 48. When did they try that?

A. Possibly two years ago.

X Int. 49. Did you, personally, try that?

A. Yes, sir, myself.

X Int. 50. This bleeding that you have spoken of would have obliterated the mark?

A. No, I should think not.

tobacco was cut, so that it bleeds, the result will be that the tobacco

X Int. 51. Then, you mean, don't you, that if the wrapper of the itself will not be as nicely finished, although the mark will still be there?

A. Yes, sir.

X Int. 52. But whether the tobacco bleeds or not will
308 depend very much upon its order and condition, will it not as to whether heavily sweetened or not?

A. Yes, sir; of course, you might press tobacco if it had no sweetening in it, but not necessarily; bleeding would cut the wrapper.

Re-examination by Mr. HATCH:

R. Int. 53. And that tobacco that you mention having tried to mark in a mould by wires, now, if you should take that and put it in the finisher between smooth metal plates, and subject it to a heavy pressure there in the finisher, would not that pressure tend to obliterate the mark?

A. It would tend to obliterate it, but not wholly; it would show the marks—show the impression.

R. Int. 54. But the tendency would be to obliterate it, would it not?

A. Yes, sir; the tendency would be that way.

R. Int. 55. So that if the mark received in the mould had been slight, or it was an impression that had not been deep, then the pressure in the follower might obliterate it, might it not?

A. Yes, sir; would not be as distinct.

R. Int. 56. In this tobacco that you say you tried, by marking lines in it with wires, and so on, how had that tobacco been prepared for the mould?

A. Well, it had been made on the—I think the tobacco that I experimented with was made on the Jones machine.

R. Int. 57. Describe the Jones machine.

A. Well, it is a machine that the tobacco received considerable pressure.

R. Int. 58. How much pressure?

A. It is considered 150 tons. I am taking what they told me; I know it works upon a screw, and each plug is subjected to a pressure of four tons.

R. Int. 59. Four separate pressures?

A. Four separate troughs, one after the other, remains in there, the fourth being taken out every time.

R. Int. 60. So that by that Jones machine each plug in the machine receives four separate and distinct forming pressures?

309 A. Yes, sir.

R. Int. 61. And this pressure, you say you are informed by those making the machine, is about 150 tons.

A. About 150 tons, yes, sir; and the lump, when it comes out, is very solid.

R. Int. 62. When the lump comes out it is very solid?

A. Yes, sir.

R. Int. 63. And has received these four separate forming pressures?

A. Yes, sir.

R. Int. 64. Now, after the plug is formed in that way, do you wrap it, or has it been wrapped before it goes into the machine?

A. We wrap it after it comes from the machine.

R. Int. 65. You wrap it after you have compressed it in this way, by these four forming pressures, as I understand you, so as to save the expense of the wrapper; is not that one of the objects?

A. One, and to prevent the plug from wasting with scraps falling from it?

R. Int. 66. Does it not also serve to prevent the plug from swelling in the after process?

A. Yes, sir; and save wrapping.

R. Int. 67. Now, when the plug had been thus solidified, then, as I understand you, you put it under a hydraulic press, and there press in the usual way?

A. In the mould, yes, sir.

R. Int. 68. In the mould under the hydraulic press?

A. Yes, sir.

R. Int. 69. Now, let me ask, would not that plug, so marked, even if you succeeded in getting the mark upon it, if it endured in that way, would not that plug, when it came out of the mould, have a roughness upon it, to some extent?

A. It does not have the desired finish; I can answer in that way, it does not have the desired finish, that is all.

R. Int. 70. How extensively are those Jones machines used, do you know; are they pretty generally used in the trade, or a similar machine?

A. They are in general use. Allen & Ellis use them, and
310 Scrour & Noonan, of Covington; and there is a number of them in use in Virginia.

R. Int. 71. There are a number in use in Virginia?

A. Yes, sir.

R. Int. 72. Do you know whether those, or similar machines, are used in St. Louis by manufacturers?

A. No, I don't know; I think they use what we call the "Ribbon Machine" there almost altogether.

R. Int. 73. You think they use the ribbon machine almost altogether?

A. Yes, sir.

R. Int. 74. This ribbon machine is a machine by which the tobacco is solidified before it goes into the mould?

A. Yes, sir, solidified; passes under the rollers, you know, on the ribbon.

R. Int. 75. Successive rollers.

A. Some have, yes, sir; and you might say successive rollers.

R. Int. 76. What would be the expense, in your opinion, of fitting up sets of moulds in which the followers had marking devices upon their surfaces; would it not be a large expense to a tobacco manufacturing establishment?

A. Yes, sir, it would be a large expense.

R. Int. 77. You would require more sets of molds, would you not?

A. Would, to carry it out successfully, yes, sir.

R. Int. 78. And I understand you to say that, also, this would have the disadvantage of injuring the sets of moulds by these mark-

ing devices coming in contact with the iron of the mould in the process used?

A. In the handling, yes, sir.

R. Int. 79. And in the handling?

A. Yes, in the washing.

R. Int. 80. And what would be the effect, also, of piling these follow blocks one above another? Wouldn't it tend to injure the marking device?

A. The wear and tear would be greater, yes, sir, than if smooth.

311 Recross-examination by Mr. Boyd:

R. X Int. 81. Does your firm make hand-cased goods?

A. We occasionally do; yes, sir.

R. X Int. 82. With what class of work?

A. Being odd shapes, I will call it.

R. X Int. 83. Would it be an inferior quality of tobacco?

A. No, sir.

R. X Int. 84. Is it as good as your other tobacco?

A. Yes, sir.

R. X Int. 85. Do you mark any of your hand-cased goods?

A. No, sir.

R. X Int. 86. Did you ever try to mark hand-cased goods?

A. I don't know that I have.

Redirect examination by Mr. Hayes:

R. Int. 87. These hand-cased goods, as I understand, are irregular shapes, where there are rolls and coils, etc., that you have made; is this correct?

A. Well, we have made plug any shape, and yet not marked it.

R. Int. 88. But when you said "irregular shapes," what do you refer to?

A. I mean that we don't mark sixteen-ounce, pounds, understand, and double-thick fours.

Recross-examination by Mr. Boyd:

R. X Int. 89. Why do you make these hand-cased?

A. You have not got exactly the term that I used, I think.

R. X Int. 89½. I used the word "hand-cased" in contradistinction from dipped goods. Is that what you mean?

A. No, sir.

R. X Int. 90. Do you make hand-cased goods?

A. I mean hand-made; I should not say hand-cased; hand-made, not hand-cased. I mean I case goods by hand; we don't case goods by machinery as a general thing, but it is hand-made. Now, if I take a plug made by machine, understand that it is different from plug that we make by hand, and it is hand-made or machine-made; that is what I should call it.

312 R. X Int. 91. Well, for the purpose of explanation, the term hand-cased has been used in contradistinction to dipped goods, machine goods; instead of sprinkling, by a broom or brush,

or other device, passing into a trough and there soaked and dipped out.

A. We haven't made any such goods.

R. X Int. 92. Do you make any other goods than dipped goods?

A. No, sir.

R. X Int. 93. Did you ever make other than dipped goods?

A. I don't think we have.

Redirect examination by Mr. Hayes:

R. Int. 94. And in using the word "hand-cased," then, in your examination, you intended to have used the word "hand-made"?

A. Hand-made, yes sir, because the dip is not what I wish to refer to at all. Probably I had better explain that; you see I was laboring under one impression and he was driving at another.

R. Int. 95. And by hand-made you mean goods where the tobacco was formed in the shape into which it went into the mould, by hand, in contradistinction to goods that were formed by the machine-pressure?

A. Yes, sir, that is what I understood; I understood him one way, and he meant another.

(Signature waived.)

313 ARTHUR L. ROBINSON.

Redirect examination by Mr. Hayes:

R. Int. 148. Look at this plate that I now show you, marked "Exhibit Smith Plate," and note the sharp edges of the letters used

314 thereon, and suppose that plate was used to attempt to mark tobacco in the mold, hand-made lumps, in an ordinary mold, how, in your opinion, as a tobacco manufacturer, would it work with reference to making a permanent, durable mark?

A. I don't think it would work at all, sir.

R. Int. 149. Why?

A. Well, the sharp ends would cut the wrapper, and on hand-made work, round roll, it is put on top of it and subjected to very severe pressure in the mold. With this pressure I don't think it practicable to make a good mark.

R. Int. 150. What effect would cutting the wrapper have?

A. It would make the work bleed, and make the lump stick together, and the wrapper would tear off, and it would become unsalable.

Recross-examination by Mr. Boyle:

R. X Int. 151. Would that plate under the conditions named make a legible mark?

A. It would not make a legible mark; would not make a uniform mark; might make a mark on one plug, and might not on the other, and I don't think it would be of any success or any value at all.

R. X Int. 152. Would it make a legible mark?

A. I doubt it; I don't think it would.

R. X Int. 153. Why?

A. Well, the lump going through on first pressure and the roll not having received any previously defined pressure at all, when it was put through the second pressure to finish the plug, the pressure received would press the mark out, and the natural tendency would be for the tobacco to swell and obliterate the mark to a greater or less extent.

R. X Int. 154. If that tobacco had been run through a plug machine before going into the mould, would it make a legible mark?

A. If the tobacco had been previously solidified, so as to take its permanent set at the time this mark was placed upon it, why, the mark would be imperfect, from the fact that it would cut the wrapper, but still I think the mark would stay legible.

315 R. X Int. 155. Then, this illegibility depends upon the circumstances of the wrapper being cut by the letters?

A. Do you refer to tobacco made into long rolls, or tobacco that is previously solidified?

R. X Int. 156. Made under the condition stated in your direct examination.

A. What are those conditions?

R. X Int. 157. If you can't remember from the time of taking your direct examination, the conditions under which you answered the question, I wish that you would so state, and that it be put upon record.

A. If this mark is attempted to be placed on a hand-made lump, and to be pressed into it, the first pressure the aforesaid hand-made lump receives, it would be a failure. If the lump had been solidified previously, and this mark was put on it at the time it received its permanent set, it might be legible.

R. X Int. 158. Do you consider the pressure that a plug of tobacco receives in passing through the plug-machine, a solidifying pressure?

A. Well, in some plug-machines the plug receives a solidifying pressure. For instance, the machine testified to by Mr. McCallay, in his testimony yesterday, where each length of tobacco receives four successive pressures before the wrapper is put upon it, then goes to the mould, where it receives hydraulic pressure.

R. X Int. 159. Is that particular machine the one the trade would understand you to mean when you use the word "plug machine"?

A. I think the trade would generally understand, when I use the term "plug machine," the ribbon machine or Stone machine, or something similar, where it passes over a long ribbon.

R. X Int. 160. How much compression would there be upon the plug when it goes through the ribbon plug machine?

A. Very slight; just sufficient to hold it together.

R. X Int. 161. So the leaves of the tobacco are simply stuck together enough to retain the square form?

A. That is all, sir.

R. X Int. 162. Well, now, do you think that if tobacco were

316 run through that ribbon plug machine, that with that plate you could mark it legibly in the moulds?

A. I do not, sir.

R. X. Int. 163. Why not?

A. Well, I think subsequent pressure upon the tobacco would be enough to solidify it; the subsequent pressure received would damage it more or less; would obliterate the mark and make it illegible.

R. X Int. 164. Suppose it didn't run through the finisher, but went directly from the moulds to the caddy, how would it be then?

A. Well, unless it was turned in the mould and pressed again it would have some defects, I think.

R. X Int. 165. Practically, do you know how that would be from actual experiment?

A. No, sir; I have made no experiment in packing tobacco directly from the mould into the caddy. I can only judge from experience in other lines.

R. X Int. 166. Now, suppose that plate were used upon hand-cased goods in the mould, the top being first pressed in the mould, then blocked out, turned and returned to the mould, and this plate then put upon it, and subjected to pressure, and packed directly from that into the caddy, do you think that mark then would be legible?

A. The tobacco having been solidified by the first pressure in the moulds, and then this plate being placed on it at the time it was pressed again, I should think the mark would be legible. It would be defective on account of the sharp edges, and would not make as good work as it made with rounded letters. It might be legible, but would not be good workmanship, on account of cutting the wrapper and defacing the plug.

R. X Int. 167. But if it didn't happen that the wrapper was cut, would not the mark be good and legible?

A. Well, if the lump was pressed so soft that it would not cut the wrapper, it would be very apt to swell endways.

R. X Int. 168. If the letters didn't cut the wrapper would the mark be good and legible?

A. I should think they would, sir, if it didn't cut the wrap-
317 per; but that is almost supposing something that could not occur. They are bound to cut the wrapper, or be so soft as to swell up.

R. X Int. 169. Then, the reason why filling this press with that plate, the result would not be successful, would be due simply to the fact that the letters were mechanically imperfect?

A. No; the first great principle of trying to apply the mark, as I understand it, on the first pressure to the plug—an impossibility; can't be done.

R. X Int. 170. Do you call it the first pressure of the plug when the plug is marked in the manner described in the questions you have been answering?

A. Well, you supposed a case where the marking was on the sec-

ond pressure of the plug. As I said before, in the second pressure of the plug the mark might be legible, but would be more or less imperfect, because of what I have stated. If it was attempted to be marked on the first pressure, I don't believe it is practicable.

R. X Int. 171. Then when the plug is marked at the second pressure in the mould with this plate the fact that this mark is imperfect or illegible is due to the imperfect mechanical construction of the plate in its letters, is it not?

A. I should think it would be possible to mark that way with the plate properly constructed.

R. X Int. 172. Well, have you any doubt as to the fact that with a plate having its letters in proper condition, that tobacco may be successfully and properly marked at the second impression in the moulds?

A. I don't think I have, sir; I think it can be so marked, so as to make a legible mark.

R. X Int. 173. Now, suppose the tobacco hand-eased is subjected to the ordinary pressure in the moulds and then removed to the finisher and this plate put upon the top of the tobacco, and above this plate the ordinary finisher-plate, and there subjected to heavy pressure, what would be your opinion as to the legibility of the mark made by it after it is packed into the caddy ready for market?

A. Well, you might have a legible mark on the one plug that you would have that on. I should think the work would be defective, from the fact that they would have to press down this
318 whole tin into that plug to make a good, uniform pressure on the other plug. I think it would not make imperfect work; would not be first-class in that respect, still might make a legible mark.

R. X Int. 174. You mean that it would not be first-class work, in good condition, so far as the question of the appearance of the tobacco is concerned, after it was made, do you not?

A. Remember that if the edges were rounded, and the tin was made in perfectly good condition, good shape, mechanical shape.

R. X Int. 175. Then your opinion is that the necessity of pressing one plug more than its neighbor, to a depth equal to the thickness of that plate, would materially injure the appearance of the unmarked plugs?

A. Well, the objection to that in manufacturing would be that you would not get as much pressure on the other plugs as you did on that particular plug, and the increased pressure necessary to sink that, you might not have your other work pressed hard enough, and some of them pressed hard enough to be too soft.

R. X Int. 176. Well, do you mean that with this plate put upon one plug in the finisher that it would be impossible to press all the plugs sufficiently to make good merchantable plugs?

A. No; you would be able to put sufficient pressure upon them, but you put that much more upon this. It is something that no manufacturer who had any reputation would attempt, to press one plug in the finisher that much harder than he did the balance.

R. X Int. 177. How much difference in the degree of pressure

upon the unmarked plug and the marked plug, would be caused by the interposition of this metal plate?

A. Well, I could not state that, sir; there would be, of course, that one plug would receive that much greater pressure which was necessary to sink the plate in it, but what that would be I cannot say.

R. X Int. 178. You don't mean to be understood as saying that the additional pressure necessary to sink that plate to a level with the adjoining plugs would be appreciable?

A. Your sinking that plug that had that plate on would be that much more pressure on the balance.

R. X Int. 179. Would it be appreciable as an element in the manufacture of tobacco?

319 A. I don't think that any manufacturer of tobacco would attempt it, sir.

R. X Int. 180. Would it be appreciable—would it be taken into account in the manufacture of tobacco under those circumstances?

A. Well, no manufacturer would attempt to mark one plug and not mark the balance in the finisher. It is supposing something impossible to occur, almost.

R. X Int. 181. Do you mean that it is impossible to occur by means of any physical impossibility of doing the thing?

A. No; not on account of the physical impossibility, but simply because any man that had any knowledge of his business would not attempt anything of the kind. If he did for one, he would do it for all?

R. Int. 182. Do you think that the additional pressure required to sink that thin plate to a level with the adjoining plugs would be of any importance in the manufacture of tobacco?

A. Well, it might or might not, Mr. Boyd.

R. X Int. 183. When might it, and when might it not?

A. Well, in case, as sometimes happens, more especially with careless manufacturers, that one lump has got more weight in than another, more tobacco in than another; why, you don't get a perfect uniform pressure on your goods. If you have them differ, and have to sink that plate, you make it that much worse. In case you had all your lumps in the finisher, and uniform in weight and in the quantity of the tobacco therein, the pressure that is necessary to sink that plate in there might not be of much practical importance, sir.

R. X Int. 184. Then, I understand, that in your opinion no manufacturer of any sense would mark only a single plug of his tobacco?

A. I don't see how any manufacturer of any sense could expect to gain anything by simply marking one plug, unless simply trying it as an experiment; and if it was a good thing to do, go on, and if not a good thing, why quit it.

R. X Int. 185. Suppose it turned out a good thing to do it on one, then you think any manufacturer who had sense about him would do it on all, do you?

320 A. I do, most certainly; and he would not lose much time doing it, either.

R. X Int. 186. So then, if it marks one plug, any manufacturer would know enough, if he could, to mark them all at the same time, would he?

A. I should think that would be self-obvious, sir.

Redirect examination by Mr. HATCH:

R. Int. 187. Look at this Smith plate, and say if, in your opinion, as a practical manufacturer, you believe it can be successfully used for manufacturing and marking plug tobacco in the mould.

A. I do not.

R. Int. 188. Now, will you please state fully why you don't believe it?

A. I believe the sharp edges of that Smith plate, as I have stated before, would cut the wrapper. Furthermore, if marked in the moulds, at the first pressure, the subsequent pressure received, even if that mechanical defect was overcome by the use of rounded edges, the subsequent pressure received in the finisher and box would obliterate, more or less, the mark, and make it imperfect and unmerchantable.

(Signature waived.)

321 CHARLES D. BENNETT, a witness also produced on behalf of complainants, having been first duly sworn, deposes and says, in answer to interrogatories, as follows, to wit:

Direct examination by Mr. STEM:

Int. 1. State your name, age, residence, and occupation.

A. My name is Charles D. Bennett; I am a private detective; my age is 31 years; residence, St. Louis.

322 Int. 2. State whether you know E. F. Smith, of Evening Shade, Arkansas.

A. I do; yes, sir.

Int. 3. State whether you ever had an interview with Mr. Smith; and, if so, when and where?

A. I had an interview with Mr. Smith at his room, in the La Clede, on April 5th, in this year, 1880.

Int. 4. Do you know what Mr. Smith was in St. Louis for at that time?

A. He was there for the purpose of giving testimony in a suit.

Int. 5. What suit?

A. The suit of Miller against Liggett & Myers, I believe; I don't know the title of the suit; those are the parties.

Int. 6. State whether you had any conversation with Mr. Smith at that time with regard to the subject of the testimony he was to give in that suit.

A. I did; yes, sir.

Int. 7. What had it reference to?

A. Oh, well, the use of a device for marking tobacco, plug tobacco.

Int. 8. Did he say which side he was going to testify for?

A believe he told me he was a witness for the defendants, Liggett & Meyers.

Int. 9. Did you represent yourself to him as being interested in the firm of Miller & Worley?

A. I represented myself to him as being connected with a member of the firm.

Int. 10. By relationship?

A. Yes, sir.

Int. 11. Did he make any proposition to you with regard to his testimony?

A. Yes, sir; he did.

Int. 12. What was that?

A. He made a proposition, for a consideration, to give testimony that would be favorable to Miller & Worley and against the other side.

323 Int. 13. Did he say what his testimony would be, in the event of Miller & Worley paying him the amount of money demanded?

A. Yes, sir.

Int. 14. What did he say it would be?

A. His words, I believe, were just these: It will be just the way you want it; that the use of this plate for marking tobacco was simply an experiment with me. I experimented with it a while and then threw it aside." He remarked then aside to me, and says, "It is a fact," he says, "it was only an experiment." He then went on to state that there was difficulties connected with the use of this plate that he had never been able to overcome; never been able to make it work properly.

Int. 15. Did he state what those difficulties were?

A. Yes, sir; he stated that, by some means, he undertook to explain to me how it was, but he used terms that it would take a person pretty well versed in the manufacture of tobacco to understand; but didn't make it intelligible to me. The amount of it was that in pressing, in making this impression on the plug, it forced the air into the tobacco, were the words he used, and made a blubber and blister, and that when the tobacco got dry, that the wrapper would come off; that he had never been able to overcome that difficulty, and consequently threw it aside.

Int. 16. Did he name the amount of money he would require to testify upon that side of the case?

A. He did.

Int. 17. What were his terms?

A. His figures were $5,000 cash, $5,000 on the favorable termination of that suit, that is, favorable to Miller & Worley, $10,000 in one year, and $10,000 in two years.

Int. 18. Did he put these terms in writing?

A. He did, yes, sir.

Int. 19. Did he say anything to indicate how he arrived at his determination to charge this amount?

A. Well, he told me that he had known for a long time that there was a large amount of money at stake, and he intended for a long

time to make some money out of it. He stated that Mr. Foree, when he was in Evening Shade, Arkansas, told him that he could find twenty, or more, tobacco manufacturers that would pay
324 $1,000 each for testimony to bust this patent; and that he said he concluded that Miller & Worley had more at stake than the tobacco manufacturers, and that there was more money to be made out of them than out of the tobacco manufacturers.

Int. 20. Upon what did Mr. Smith write his proposition that you have named?

A. On the inside of the lid of a collar box—a paper collar box.

Int. 21. Have you that collar-box lid?

A. I brought it here with me; yes, sir.

Int. 22. Please produce it, and put it in evidence as a part of your deposition.

A. (Witness producing collar-box lid.) I now produce the collar-box lid, and offer it as part of my evidence, marked "Smith Proposition."

Int. 23. State whether or not you know Robert E. Lee, formerly of St. Louis.

A. Well, a slight acquaintance with him.

Int. 24. For how long have you been acquainted with him?

A. I have known him by sight, I think, two years and a half or three years; known him by reputation much longer.

Int. 25. Do you know his reputation in St. Louis among those who know him for truth and veracity?

A. I do; yes, sir.

Int. 26. What is that reputation?

A. It is bad.

Int. 27. Who is president of the Fifth Street Railroad Company, of St. Louis?

A. Christian Peper, unless he has been replaced within a very short time.

Int. 28. How long has he been president?

A. I think for a number of years; I could not tell just how long.

Cross-examination by Mr. Boyd:

X Int. 29. How long have you been detective, Mr. Bennett?

A. About six years.

X Int. 30. With whom?

325 A. Myself.

X Int. 31. With whom are you now?

A. Myself.

X Int. 32. Where is your office?

A. Room 21, southwest corner of Fifth and Olive.

X Int. 33. With Mr. Stiles?

A. Yes, sir.

X Int. 34. You are not connected with him in business?

A. No, sir; my business is entirely separate from his, excepting occasional cases.

X Int. 35. Have you always been a private detective?

A. Yes, sir.

X Int. 36. Never on the regular force?

A. No, sir.

X Int. 37. How came you to go and see Mr. Smith?

A. I went there at the request of Mr. Stiles.

X Int. 38. How came Mr. Stiles to request you to go there?

A. I could not tell you that, sir; you will have to ask him that.

X Int. 39. Do you state, on your oath, that you cannot tell me why Mr. Stiles asked to go and see Mr. Smith?

A. I do, sir.

X Int. 40. You don't know what interest Mr. Stiles had in this matter?

A. Of my own knowledge, I do not.

X Int. 41. You don't know, of your own knowledge, that Mr. Stiles has had anything to do with looking up testimony in this case, do you?

A. Yes, sir; I know that.

X Int. 42. What did Mr. Stiles tell you [to] do when you went to see Mr. Smith?

A. Mr. Stiles told me that Mr. Smith was at the La Clede Hotel, and showed me a letter that was written by him from Evening Shade, Arkansas, that he said he thought looked like a bid for a sell-out, and that he wanted to know if Smith was on the sell-out; if that was his purpose.

X Int. 44. That is all he said to you.

326 A. He told me that he wanted me to see Smith and find out if he was willing to sell his testimony; if that was what that letter was written for.

X Int. 44. Is that all he said to you?

A. That is the substance of what he said to me.

X Int. 45. No more instructions; no more suggestions than that?

A. No, sir; he told me the object that he wished to accomplish, and Mr. Stiles knew, I suppose, that I was fully able to find means to do it.

X Int. 46. When you went to see Mr. Smith, you told him you were a relative of Miller & Worley?

A. Not of Miller & Worley; of Mr. Miller.

X Int. 47. You did?

A. Yes, sir.

X Int. 48. Was it true?

A. No, sir.

X Int. 49. No foundation in truth whatever?

A. None in the world, sir.

X Int. 50. Entirely false?

A. It was.

X Int. 51. What next did you say to Mr. Smith?

A. I believe I showed him the letter that he had written; I have forgotten the order in which things occurred, probably, but I think that is it.

X Int. 52. What did you say to him?

A. Well, sir, we talked about the weather and his visit to the city—a number of things; then we talked about this letter. He

stated that he had made an affidavit; and had sent it to Foree. I asked him the contents of the affidavit and what it was, and he told me.

X Int. 53. How came he to tell you that he had made an affidavit?

A. I don't remember the conversation that brought that up. We had quite a long conversation with regard to his business in St. Louis.

X Int. 54. You are telling me now what he said: I asked you what you said to him.

327 A. Tell me what particular part of this conversation you want and I will endeavor to give it, Mr. Boyd.

X Int. 55. What did you first say to him when you broached this subject of marking tobacco?

A. I could not tell you what I said to him first. We talked about his affidavit; he told me the contents of his affidavit. First, I asked him if his affidavit permitted him to testify in the case. He told me he was not such a damned fool as to — a thing of that kind. I then told him that he had made some remarks that I concluded that there was a good deal of worldly wisdom in, and that was that he had not made any money on this thing yet; that he had experimented with it and thrown it aside; hadn't made any money out of it. He said he thought he ought to have made some money. He told me that he did think so; that he ought to have some money out of it, and he was going to make some.

X Int. 56. What did you tell him you came there for?

A. I told him I came there to see what he had to say in regard to the suggestion that his remark was supposed to convey; the idea that this remark conveyed.

X Int. 57. What remark?

A. About his not having made any money out of this thing; was going to make some money. He had made that remark before, in connection with another, that he could tell the truth, but it made a great deal of difference in the way the truth was told.

X Int. 58. Where had he made that remark?

A. Well, I was told that he had made it to some one in Arkansas.

X Int. 59. Who told you so?

A. I believe Mr. Stiles.

X Int. 60. Then Mr. Stiles did give you some suggestions other than you have spoken of before?

A. That was not a suggestion; that was a statement of what purported to be a fact.

X Int. 61. That gave you no aid in framing your future course?

A. Well, possibly it might.

X Int. 62. Actually it did?

328 A. I don't regard that as having cut an important figure in this transaction at all.

X Int. 63. You say, as a professional detective, that it is not important for you to know, when you go tempt a man, what a man has said before with regard to the subject, do you?

A. Well, if you will allow me to answer your question in my own

way I will endeavor to answer it, Mr. Boyd. I can't answer that question directly, yes or no.

Mr. STEM: You can answer in your own way.

A. I didn't regard it as attempting to tempt a man. According to the statement made to me, it was simply attempting to find out if this man was ready to sell his testimony to the highest bidder; if he was ready to perjure himself, and to sell his testimony; and if that was his business it was my business to find it out. It was not tempting him; his letters showed conclusively to me that the tempter had been at work on him; that he had adopted the principle that he was going to make some money, a long time ago.

X Int. 64. That letter was written to Miller & Worley?

A. I believe it was, yes, sir.

X Int. 65. Then, if the tempter had been at work, it was Miller & Worley had been at work.

A. Well, I should say, from some conversation that took place afterwards, that it was Force; at that time supposed probably that it was the tempter that he carried within himself.

X Int. 66. Now, Mr. Bennett, will you please state what was said in that interview from beginning to end that would indicate in the slightest that Mr. Force tempted that man to give false testimony.

A. I have stated that Mr. Smith stated to me that in a conversation with Force, at Evening Shade, Arkansas, Mr. Force told him that he could find twenty or more manufacturers of plug tobacco who would pay $1,000 apiece for testimony to beat this patent. That is the language used by him, I think, verbatim.

X Int. 67. Do you know that Mr. Smith, under oath, has testified that he never told you anything of that kind?

A. Well, no, I don't know; I read his testimony; I didn't find anything bearing on any statement that he should have made
329 to me, in regard to Force; there may be; I read it over carelessly.

X Int. 68. Whom did you tell him you came there from?

A. From Miller, I believe, sir.

X Int. 69. Was that true?

A. No, sir.

X Int. 70. That was false also?

A. That was false also.

X Int. 71. No foundation in truth whatever?

A. So far as I know there was none. I didn't make any attempt at all to tell Mr. Smith a straight story. You understand, Mr. Boyd, that when one attempts to gain the confidence of a man of this kind, to get him to tell his own villainy, you probably have got to do so. If I should have gone to a man and told the truth, and said, "I am a detective, and I have come to find out if you are willing to sell your testimony, the chances are that our interview would not have lasted very long, neither would I have obtained facts as I did. It is essential in all cases where a man in my business approaches another for the purpose of obtaining his confidence to give him a man-

ufactured tale; you must manufacture your story to fit the occasion; and as far as the truth of any statement I made to Mr. Smith is concerned we might as well conclude it was all in one; say it was all of a piece.

X Int. 72. Then, you state that you consider it fair and honorable for a man to go to another, and, for the purpose of getting him to commit himself to a course you know would subject him to the penitentiary, tell him falsehoods from beginning to the end of the interview?

(Objected to by counsel for complainants, as not properly in cross-examination, and as irrelevant.)

A. I consider it, sir, perfectly honorable, where I have reason to believe a man has been guilty of crime, or is ready to commit one, to get his confidence in that way in order to punish him, if it is necessary.

X Int. 73. Then, you are a sort of self-constituted conservator of the morals of society?

A. We won't discuss that. You are a man of the world enough to know that that is the foundation on which all detectives work; and we might as well dismiss that.

3330 X Int. 74. I don't know whether the judges are men of the world enough to know it.

A. He is a man of ordinary sense, anyway; and if he is, he knows that no man—suppose that a detective were working a case against a scoundrel, goes and tells him, "I am a detective, come here to catch you in some villainy." That would be a far-fetched idea.

X Int. 75. What offer did you make him?

A. I didn't make him any offer.

X Int. 76. Did you tell him you were authorized to make any offer?

A. I did not; no, sir.

X Int. 77. Did you suggest that you were authorized to pay him for his testimony?

A. I didn't.

X Int. 78. Then, from anything you said, he could not have inferred that you were authorized, those whom you represented, would pay anything for his testimony?

A. I can state what brought out this proposition, if you wish the conversation that took place between us; that would be the best answer to your question.

X Int. 79. Go on.

A. After having spoken to him of this remark that he had made, I told him that I had—he stated that he had made this remark, and he said that "I thought I ought to make some money, and I am going to make it." Then I told him, "Mr. Smith, let me have your views." He wanted to know if had any proposition to make him, and I told him no, that I hadn't; and he told me that he scarcely knew how to talk; he says: "I scarcely know what to say to you; you know that this is rather a particular piece of business;" and I told him he could talk to me without any hesitation; that I

wanted to know what his proposition was, if he had any to make. He was sitting on the foot of the bed. The room was very small, and there was but one chair in it, I was occupying that, and he was resting on the foot of the bed. This collar-box was sitting on the bureau, to the left. It is a box such as standing paper
331 collars come in. He reached over on the bureau, and took the collar-box lid in his hand, and made these figures, and handed it to me and says, "Mr. Miller, there is what I want for my testimony, and the way I want it." The last figures there are one thousand, but he afterward explained that his intention was to make that ten thousand.

X Int. 80. Did he give you this box?

A. No, sir, he didn't.

X Int. 81. You took this without his knowing it?

A. I didn't take it, no, sir; I obtained it.

X Int. 82. How did you obtain it?

A. Well, I scarcely know, Mr. Boyd, how the box was obtained. I tried two methods, and I don't know really which one succeeded in getting it.

X Int. 83. Who gave it to you?

A. I believe that I received it from Mr. Stiles.

X Int. 84. You don't know where he got it?

A. I don't know whether Mr. Stiles obtained it himself or whether a district telegraph messenger-boy that I sent there obtained it and gave it to Mr. Stiles; that I could not tell.

X Int. 85. When did you get it?

A. I got it within about fifteen minutes after those figures were made. I concluded that the box-lid was valuable, and I got it.

X Int. 86. You don't know how you got it?

A. No, I don't; I got it by one of two methods, and I don't know which one.

X Int. 87. What was the first method?

A. Well, sir, I sent a messenger-boy there with a duplicate of the lid.

X Int. 88. To whom?

A. To Smith's room, with instructions to change the lids, and bring me that.

X Int. 89. How was that messenger-boy to get into Smith's room?

A. I sent him there with a message.

X Int. 90. Did he find Smith?

A. I believe he did, sir.

X Int. 91. Did the messenger-boy come back to you?

332 A. I didn't see him again that night, sir. Stiles went out, and he said he knew how the lid could be obtained, and in probably fifteen minutes he came to the office with it. I told the messenger-boy to get the lid and give it to Stiles, but whether the messenger-boy obtained the lid, or whether Stiles obtained it himself, I could not state. I didn't regard that as of any importance; the lid was what I was after, and I got that.

X Int. 92. You don't know anything now, of your own knowledge, where that lid came from, to know how it was got?

A. I know that is the lid that was in Smith's room; he made those figures on it and handed it to me. After running his pencil over it, and making those marks, he put it back on the collar-box. I know that that is the lid.

X Int. 93. Then you had a duplicate of this?

A. I had a duplicate of that? I know the marks on it. I bought a box containing the same kind of collars at a gents' furnishing store down on Fifth street.

X Int. 94. That lid was so much like this that you thought it perfectly safe to go to Smith's room and take this off and put that on, and he would never know it?

A. Why, certainly.

X Int. 95. When did you first know that Styles had this?

A. Within fifteen minutes after I left Smith's room myself.

X Int. 96. Stiles gave it to you?

A. Styles gave it to me.

X Int. 97. Where?

A. I don't remember whether he gave it to me on the street or in the office. I met him on Sixth street, between Chestnut and Pine.

X Int. 98. He waited for you?

A. No, sir; he was walking up the street and I was walking down; I walked down that direction and I met Captain Stiles, and we walked back together to the office.

X Int. 99. Was not he on the street for the purpose of meeting you?

A. No, sir, I think not; I don't suppose he expected to meet me on the street; he had left me in the office.

333 X Int. 100. Didn't he tell you to come back just as soon as you got through and report to him from this interview with Smith?

A. I had happened to go there; there was no instructions to report to him; I went back to the office, then Stiles left it and I remained awhile, probably ten minutes after Stiles went out; and I went out and walked over to Sixth street, and down Sixth street to between Chestnut and Pine, and there met Stiles coming back, and he told me there that he had the lid, and I don't remember whether he gave it to me there, or in the office.

X Int. 101. Is there nothing about this lid except those figures that enables you to identify it as the lid upon which Smith marked?

A. There is nothing about it except those figures there by which I can identify it.

X Int. 102. You swear that is Smith's hand writing?

A. I will swear that is the lid, and Smith took it off his box in his room and made the figures on it, and handed it to me; and then he ran his pencil across it and attempted to blot out those figures, and afterwards put it back on the box.

X Int. 103. What did he try to blot them out for?

A. I don't know; I suppose he'd rather not have anybody see them.

X Int. 104. Would those figures show anything of themselves?

A. Not to a person having no knowledge of the fact.

X Int. 105. Why did he want to blot them out?

A. I can't answer what his motives were, Mr. Boyd, you must question him.

X Int. 106. Where was it that Stiles gave you this box-cover?

A. I have answered that twice, that I don't know whether on the street or in our office.

X Int. 107. You say you went back to the office, Stiles went out of the office, and about ten minutes after you went out?

A. Yes, sir.

X Int. 108. Then you met Stiles?

A. Then I met Stiles.

X Int. 109. Which way was you going to meet Stiles on Sixth street?

A. I was going towards the La Clede hotel and we met.

334 X Int. 110. He had been there too?

A. He had been there too.

X Int. 111. About how near were you to the La Clede Hotel?

A. I didn't get to it.

X Int. 112. What stopped you?

A. I met Stiles and turned back.

X Int. 113. Did he give you the box then?

A. I have stated three times, and this will make the fourth, that I don't know whether he gave it to me there, or in the office. Now, Mr. Boyd, I will have it stereotyped and set up here for your benefit; I have a great deal of patience, but I have not so much that I care to answer that again.

X Int. 114. You will have to answer it as often as I choose to ask it.

A. I don't know whether I will or not.

X Int. 115. How long ago was it?

A. That was on the 5th day of April, 1880.

X Int. 116. Did you go back to the office with Stiles after you met him there on Sixth street?

A. I did, yes, sir.

X Int. 117. Was the box given to you either while you were with him, after you met him there on the street, or after you got back to the office?

A. It was, yes, sir; it was given to me within five minutes of the time that I met him on Sixth street.

X Int. 118. Did he tell you how he got it?

A. He didn't, no sir; I didn't question him; I felt very well satisfied with the result; the lid was what I wanted; I didn't know how he obtained it.

X Int. 119. How long have you known Robert E. Lee?

A. I should suppose that I knew him about three years. I am not able, Mr. Boyd, to be exact about this thing. He has been pointed out to me, and I know him by sight. I have no personal acquaintance with him.

X Int. 120. Did you ever speak to him in your life?

A. Not to my knowledge.

X Int. 121. Whom did you ever hear speak of his reputation for truth and veracity?

335 & 336 A. Well, I have heard a great many.

X Int. 122. Who?

A. I have heard a great many.

X Int. 123. Who?

A. Well, sir, I have heard a number of the members of the police department, members of the fire department, salvage corps, and some citizens.

X Int. 124. Who of the police department?

A. I have heard a number of officers speak of him.

X Int. 125. Name one of them.

A. I heard Sergeant Massman, Tom Hayhurst; I can give you a number of names; I have heard a great many of them that I probably could not recollect. I am largely acquainted among the police, and there are things upon those records that would naturally make him a subject of conversation between them and myself.

X Int. 126. What was the occasion of Sergeant Hayhurst speaking of it?

A. I don't remember that, sir.

X Int. 127. What did Sergeant Hayhurst say?

A. He was telling me something about some transactions of Lee's. It was either an attempt to put up a job on a man, or an attempt to dispose of some stolen goods, I don't know which it was; I have forgotten. It was never determined, I believe, whether it was an attempt to put up a job on a man, or an attempt to dispose of some stolen goods, or whether it was an attempt to catch him in an offense.

X Int. 128. Did that occurrence take place while Lee was on the police force?

A. It is twelve years old, sir; it occurred in 1868, I think—possibly in 1867; it was twelve or thirteen years ago.

X Int. 129. Was Lee on the police force at that time?

A. He was, at that time—yes, sir; I believe it caused his discharge from the force at that time, if I am not mistaken.

X Int. 130. That is, the offense committed by him was acting the detective, was it not?

A. I would not call it that, sir; that is not my idea of the actions of a detective.

337 X Int. 131. When did you hear Sergeant Massman speak of him?

A. That is recently; that last two weeks probably.

X Int. 132. How came he to speak about him?

A. I was in conversation with him, talking with him about Lee's reputation; asking him some facts in connection with his connection with the force.

X Int. 133. What did he say?

A. He told me a good deal about him; told me he was a constitutional liar—a bad egg; generally got drunk whenever he could get whisky.

X Int. 134. What do you mean by constitutional liar?

A. Well, sir, that is his words; you are as able to interpret them as I am.

X Int. 135. You say he used those words?

A. I think those were the exact words he used.

X Int. 136. You were then endeavoring to find as to his reputation?

A. I was, yes, sir, in talking to Massman.

X Int. 137. Did you report that conversation to your employers?

A. I think not, sir.

X Int. 138. Why not?

A. It was not expressed in such a way as would make him a witness. His expression of his knowledge of him only extended as far as he told me of it; I didn't regard it as competent testimony; I did tell him of his contradicting Lee in some, as I supposed, material facts of his testimony.

X Int. 139. Well, how far did the sergeant's connection go, if you thought that it didn't amount to sufficient evidence?

A. That he was stating his own knowledge, and not common repute.

X Int. 140. You are stating those things with which he himself and Lee were participators.

A. No, sir, of which he knew through his associations with Lee. He was stating, first, about Lee's having been discharged from the force in 1875 for being drunk. Lee was in his precinct,
338 and fell down stairs one night, and pretty near broke his neck, and Massman took him into the station-house, and turned him over to the sergeant in charge; he told me about that, and told me what kind of a fellow he was—what kind of a character.

X Int. 141. Well, how did that show that he was a constitutional liar, falling down stairs, and pretty near breaking his neck?

A. I didn't state that it showed it; I stated that Sergeant Massman stated that he had drawn his inferences from association with Lee.

X Int. 142. Is this the only occasion where his association with Lee produced that impression on his mind?

A. He only told me this fact; didn't attempt to name the date. Further, he remarked that he was a kind of a constitutional liar; his statement was that Lee was a blow-hard and a constitutional liar; I didn't undertake to question him as to all the facts that enabled him to make up his opinion.

X Int. 143. If you were looking for testimony on this point, didn't you, when the proposed witness stated a fact, didn't you inquire into the grounds of his knowledge, so as to state it?

A. I did, sir, inquire of the sergeant that way: "How do you know, of your own knowledge, and of your association with Lee, or is it something you know of common repute?" and he stated: "It is something that I know from my association with him, not by common repute."

X Int. 144. Who of the fire department have you heard speak of his reputation?

A. Well, there was probably a dozen or fifteen, or twenty.

X Int. 145. Give us the names.

A. To start, one, Chief J. W. Bame; assistant chief of fire department, Charles Evans; a number of the members of the salvage corps, but I could not tell you their names, for I don't know them; members of the engine company at Bremen avenue and Hyde Park. I know the names of but three of those, though I have heard the entire company, I think without exception, speak of him.

X Int. 146. When did you hear this talk?

A. Well, I don't know when I did hear the first talk in
339 regard to Lee. It has been years ago. I used to be a member of that company, and quite well acquainted with a number of the men of the corps and some who used to be members, and frequently, in passing there, I drop in, and in telling me about the fire at Lindell Hotel, within a number of years ago—I don't know just how long—they told me the trouble that Lee got into there, and through that they told me of his reputation—what he did.

X Int. 147. Well, what did they say?

A. Well, a man who was drunk, whenever he got whisky; a quarrelsome man, with a habit of drawing things a little too long, telling hard stories—a liar. I went back to them afterwards in this case, but only talked to three of them, I believe.

X Int. 148. Then, except lately, when you have been employed finding witnesses for this point, it is twelve or thirteen years since you heard the matter discussed?

A. No; I said twelve or thirteen years since the Lindell Hotel fire, but it has been some two to four years since the conversation at Bremen avenue. I have heard him discussed at this engine-house by different members of the department. I was a member of the department, and I am in the engine-house quite often, quite well acquainted with them and Lee, his brother being a captain of police. It has happened that his name has been mentioned a number of times in conversation at this engine-house, and I have heard him discussed there; I have heard him discussed by an ex-chief or two of the police force, and by a number of others.

X Int. 149. What ex-chief of the police force have you heard?

A. John E. D. Cosins, for one.

X Int. 150. When did you hear Cosins speak of him?

A. I heard him speak of him a number of times; I heard him speak of him in the last five or six weeks ago; and I heard Cosins speak of him a number of times in the past five years.

X Int. 151. What did he commence speaking to you about?

A. Spinning yarns about old experiences; telling about old members of the police force.

X Int. 152. What else did he say?

A. Well, he has told me of some crookedness that this man was supposed to have been engaged in, and other members of the
340 family. A brother of his was concerned in an express robbery; Bob was supposed to have been connected with it; and another case, I believe, an attempt to shake down a pal, a partner of

Fred. Beebush's; Fred. is a noted counterfeiter, now serving a term in the pen.

X Int. 153. You mean Robert E. Lee was ever charged with complicity in those things?

A. It was his brother, I think, was indicted, and Bob was suspicioned of being engaged in it; but it has never went to a conviction.

X Int. 154. Did it ever come to a trial?

A. Not to my knowledge.

X Int. 155. Was he ever presented before the grand jury, or anything of the kind?

A. I could not state whether he was or not.

X Int. 156. Did you ever hear of his being?

A. No, sir; I never knew whether there was an attempt to procure an indictment or not. It was simply charged that he was concerned in it; and Major Cosins, in giving me the points in the robbery, after stating who the evidence in the case pointed to as the perpetrators of it, in that connection would refer me to the Lees, the whole family; there is four brothers of them. Bob was not the only one discussed.

X Int. 157. Is that all he said about him?

A. That is, I believe, the substance of it. We have had a number of conversations about Lee.

X Int. 158. Now, what other ex-chief?

A. Laibold.

X Int. 159. When was Cosins chief?

A. I could not tell you.

X Int. 160. He was chief twelve years ago, wasn't he?

A. Oh, yes, and he has been more or less connected with the police force, until he got into the custom-house, twelve years ago, under Grant's first administration.

X Int. 161. It is nearer seventeen years ago that he was chief, isn't it?

A. I could not tell you; I don't know. I know all the
341 chiefs after 1867; previous to that I know nothing about it. I heard he was a chief.

X Int. 162. When was Laibold chief?

A. In 1877, I think.

X Int. 163. What was the occasion of your talking to him about it?

A. I went to see him about Lee.

X Int. 164. When?

A. About six weeks ago.

X Int. 165. Well, what did he say?

A. He said Lee was a liar, a hard case, got drunk; a first rate sort of a fellow every other way.

X Int. 166. Is that all he said?

A. That is all, sir.

X Int. 167. Didn't he give you the data upon which he based that statement?

A. No, sir; I talked to him over a glass of beer probably five minutes; that is the substance of it.

X Int. 168. What other ex-chief did you hear speak of it?

A. That is all, sir.

X Int. 169. Well, now, who, outside of the police force, fire department, and salvage corps, have you heard speak of him?

A. Oh, I have heard a good deal of talk about this man Lee for five or six years; probably about five years; and during that time there has been a good deal of talk about him. I can't give you the names of every one I have heard mention the name of Bob Lee. I have heard conversations between Stewart, the step-father-in-law, and others, in which things that were not flattering at all to Lee were given.

X Int. 170. What do you mean by not flattering?

A. Well, he was set down as a thief, scoundrel, and liar; a little of everything.

X Int. 171. These men were all friends of Lee's, were they not?

A. Not that any one knows of.

X Int. 172. Well, they were at the time when he left any of those engine companies that he was employed in, and went away, they were all friendly disposed to him?

342 A. No, sir, not anything of the kind.

X Int. 173. Were they enemies of his?

A. They are not friends of his; there is not any personal feeling between them. He is a man who is not calculated to make friends; he is quarrelsome, especially overbearing; gets drunk; and on top of that would shirk his work. That is his reputation; and he is not a man that is calculated to leave friends behind him.

X Int. 174. How was it when he left?

A. O, I know of but very few friends that the man has in the world, and I know a great many that know him.

X Int. 175. Then I would understand from your statement that he is, on the whole, rather an unpopular fellow?

A. Yes, sir, he is very unpopular; makes himself so by his disagreeable way of action.

X Int. 176. Well, when he left the police force, did he leave them in a friendly way?

A. The police force?

X Int. 177. Yes, sir.

A. Well, he was discharged for drunkenness; but I don't know that anybody told me that any of the officers had any personal feeling against the man. He was unpopular among all his friends as well as others. He was a man unpopular among his associates; made himself so, universally; and I don't think that the man had any personal friends on the force. So far as I have ever heard, he had none; I don't know of a single man among his associates who claims to be his friend. That is the claim, I think, as I understand it.

X Int. 178. He is a good deal of an Ishmaelite, isn't he?

A. Well, I should say so.

X Int. 179. How long have you been engaged in trying to find testimony relative to his character for truth and veracity on the part of these complainants?

A. Well, I could not tell you just how long; some considerably

after this April transaction; I could not tell you just how long. In my rambling around I took occasion to inquire of Lee's reputation regarding what was known about him for probably a month back.

X Int. 180. You don't mean by saying that you took occa-
343 sion that you did it merely incidentally? You made a business of it, didn't you?

A. I did, yes, sir; wherever I was among men who I thought knew anything of Lee, had formerly associated with him, I, if I got opportunity, inquired of any one what they knew of him.

X Int. 181. Well, you were not so diffident that you didn't make an opportunity when you didn't find one to turn up naturally, were you?

A. I waited, in the meantime, until I had opportunity; I did not hurry about it; as I ran across men who knew Lee I inquired. I went to see a number of persons, but most of them I would meet and talk to in the course of my ramblings.

X Int. 182. Well, you were under pay all the time for the purpose of obtaining this information?

A. Well, I should expect pay for my time when I do work, certainly.

X Int. 183. Well, you have been paid, haven't you?

A. No, sir, I have not; I have not presented a bill yet.

X Int. 184. Well, when you present it you expect to be paid?

A. I should suppose I would be.

X Int. 185. No doubt about that?

A. That is my expectation, beyond doubt.

X Int. 186. Your business over here was for the purpose of giving this testimony?

A. That is my only business here.

X Int. 187. You were in St. Louis Monday and Tuesday and Wednesday?

A. I was; yes, sir.

X Int. 188. You saw counsel for the complainants there, didn't you?

A. I did.

X Int. 189. Well, when before then did you see the counsel for the complainants?

A. I seen them about the 6th or 7th of April.

X Int. 190. You saw them before you went to see Smith?

A. I didn't, anything of the kind, sir; if you are answering for me——

344 X Int. 191. I asked you.

A. That was not a question, Mr. Boyd, you said that I did, but I said that I didn't. If you will ask me, I will answer.

X Int. 192. What day of the week did you see Smith?

A. I could not tell you; I could by the calendar. It was on the 5th day of April.

X Int. 193. What day of April did you see complainants' counsel?

A. I don't remember whether the 6th, 7th, or 8th; it was shortly after that; probably the next day; I don't remember that exactly.

X Int. 194. When did you first see either Miller or Worley?

A. About the same time, I don't know when, after my interview with Smith; some days after; I could not tell you how many days, whether it was the next day, or the second day, or the third day that I first met Mr. Miller.

X Int. 195. Mr. Worley?

A. Mr. Worley, I met him a few days ago.

X Int. 196. Then, the way this thing was brought about was, Mr. Stiles, a private detective, of St. Louis, occupying the same office with you, requested you to see Mr. Smith, and obtain this information?

345 (Objected to by counsel for defendants, as irrelevant and leading.)

Mr. STEM: The last objection is good, and the question withdrawn.

R. Int. 200. Did all of the men whom you inquired with regard to Lee's reputation testify in the case?

(Objected to by counsel for defendants, for the reason that the record itself shows that fact, and that is the best evidence.)

R. Int. 201. Did any of them offer any objection to testifying?

(Objected to by counsel for defendants on the same grounds.)

A. Yes, sir, they did.

R. Int. 202. What was their reason for not wishing to appear?

(Objected to by counsel for defendants on the same grounds, with the further objection that it is calling for hearsay testimony.)

A. In some cases the objection was on account of a brother of this man being a captain of police and a prominent candidate for chief of police.

R. Int. 203. What is his name?

A. His name is William Lee.

(Signature waived.)

346 DEFENDANTS' EXHIBITS.

Cope's Patent.

English Letters Patent, No. 1396, dated April 29, 1868.

THOMAS and GEORGE COPE, both of Liverpool, England.

"IMPROVEMENT IN PRESSING TOBACCO."

Specification in pursuance of the conditions of the letters patent filed by the said Thomas Cope and George Cope in the Great Seal Patent Office on the 28th October, 1868.

To all to whom these presents shall come we, Thomas Cope and George Cope, both of Liverpool, in the county of Lancaster, tobacco manufacturers, send greeting:

Whereas Her Most Excellent Majesty Queen Victoria, by her letters patent bearing date the twenty-ninth day of April, in the year

of our Lord one thousand eight hundred and sixty-eight, in the thirty-first year of her reign, did, for herself, her heirs, and successors, give and grant unto us, the said Thomas Cope and George Cope, her special license, that we, the said Thomas Cope and George Cope, our executors, administrators, and assigns, or such others as we, the said Thomas Cope and George Cope, our executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter, during the term therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for
347 "improvements in machinery for molding, pressing, and stamping Cavendish and other tobacco into any desired form by suitable die pieces," upon the condition (amongst others) that we, the said Thomas Cope and George Cope, our executors or administrators, by an instrument in writing, under our, or their, or one of our or their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after date of the said letters patent.

Now know ye, that we, the said Thomas Cope and George Cope, do hereby declare the nature of our said invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement, reference being had to the accompanying drawings and to the figures and letters thereon, that is to say:

Our invention, which relates to mechanism for molding, pressing, and stamping tobacco, consists of a strong frame with standards of cast or other metal, fitted with the necessary provisions for attaching pedestals, shafts, and wheelwork, and secure it firmly to a foundation plate. To this frame we bolt a turned face plate or table of any required dimensions, having a hole bored out in its centre to receive a turned bolt or spindle, or it may be fitted with slides for a traveling table. Over or on the said face plate or stationary table we mount a movable, or rotating or traveling circular, octagonal, hexagonal, or other suitable formed plate or table of any required thickness. The said movable plate or table is made to move on or with the before-mentioned turned bolt or spindle, or is made to travel from side to side, or to move in any desired direction. Around its outer diameter, or in any other convenient part, we form die holes of the required shape. Motion is given to bring forward the dises in succession by a projecting stud from the main driving wheel, and is so arranged that by the action of a lever it moves into exactly the right position for the die, whatever be the distance it is required to move.

Above the last-named plate or table and attached to the frame-work is the die frame or presser, corresponding in outline to the die
348 holes in the movable plate or table. The said die-frame or presser is actuated by a cam of peculiar shape, so that for a quarter of its revolution it ceases to give motion to the die when at

the top and bottom of the stroke, the tobacco is thereby subjected to and left under pressure for the required time at the bottom of the stroke. Attached to the die frame is a projection of metal carrying a standard which serves the purpose of forcing the pressed tobacco out of one die whilst the tobacco in the following one undergoes pressing and shaping. The said machinery or machine is actuated by powerful wheel-work, and is driven by steam or other motive-power.

We wish it to be understood that the above-named die-plates may be made in duplicate with the die-holes to suit the work required, and may be readily changed, thus making one machine answer all purposes.

We may state that hitherto manufacturers have partly pressed the tobacco, and afterwards subjected it to hydraulic pressure, before putting into the pot molds; now, by the above machinery, the double pressing is not necessary, consequently a greater quantity of formed tobacco is produced in less time at less cost. Having arranged the machinery for its particular work the attendant sits in front and fills the dies with the proper quantity of tobacco one after the other; these dies with the movable plate or table, move or travel underneath the die-piece, and receive the requisite amount and continuance of pressure. At the time the tobacco in one of the dies is being subjected to pressure another die is being filled and a third is being relieved of the pressed tobacco by the metal projection or thrust plate above referred to. The formed tobacco falls on to a traveling apron or other carrier, or into any suitable receptacle.

This machine is useful for various purposes in manufacturing tobacco; it can be advantageously employed in stamping or forming devices of various kinds on tobacco, and shaping tobacco for sale in new forms, but it is particularly well adapted for use in that manufacture of tobacco invented by us and called "Rifle Cake Tobacco;" that is to say, cut or shag tobacco, so pressed into small cakes that its keeping properties are improved and its flavor retained for a greater length of time.

That our said invention may be more readily seen and un-
349 derstood we have hereunto annexed drawings in illustration of its practical application, like letters and figures marked thereon being used to denote similar parts.

Fig. 1 is a side elevation, partially in section, of our improved machine for pressing and forming tobacco into any desired shape. Fig. 2 is a front elevation of the same.

A is a strong framing, of cast metal, standing on a solid foundation, having bolted to it B, a circular stationary plate or table of metal (in this case), turned on the top side to a true surface, and formed with an opening in it a little to the left, to allow the thrust plate *b* to push out the formed and pressed tobacco. Upon this plate is mounted the die or movable plate or table C (also circular in this case), having arranged near its circumference a number of die holes, D, of any required form. Through this plate and the lower one, B, the shaft or spindle E passes. Upon E is the wheel F, gearing into the wheel G on the shaft H, which latter passes through the fram-

ing A, and carries the pawl wheel I. I is actuated by the pawl K, and the stud L, secured in the driving wheel M. Every revolution of M the stud L comes into contact with the lever N, and by the parts just mentioned moves the die table C, and brings another die, D, under the die piece or presser P. Fitted into the driving wheel M is the cam-shaft O, actuating the die P the required stroke for pressing the tobacco, and at the same time pushing out the previously pressed tobacco through the openings in the lower plate B on a traveling apron or into a receptacle.

By reference to the drawing it will be seen that the cam O^1, for a quarter of its diameter, is turned from the same center as the shaft, so that the slide or die piece P eases its motion for a time at the top and bottom of its stroke, and the tobacco remains under pressure for a quarter of this revolution. The same takes place at the top of the stroke, thus giving the die table C sufficient time to move from one die to the other before the die piece P again descends upon the tobacco Q in the next die. The tobacco is usually covered over by a thin metal plate, R, which fits the die exactly, and keeps the tobacco in position until the die piece P comes down upon it, and presses it to the required thickness, when on the next move it is pushed out by the thrust plate *b*. The full pressure of P should be exerted with ordinary shag tobaccos for two seconds on each die full. The machine is driven by the pinion S on the shaft T, and set in motion by the pulleys U, as is well understood. The die plate C can be easily removed and another fixed in its place by removing the nut *c* and the washer *f*.

Having now fully described and ascertained the nature of our said invention, and how we believe the same may be most advantageously used in the manufacture of tobacco, we wish it to be understood that we do not confine ourselves to the precise details or relative dimensions of the various parts of the machine hereinbefore described, as it will be readily seen that the machine may be variously modified without departing from the leading features; what we claim is the self-acting circular or traveling die table C, or its equivalent, for containing the various designs and forms of dies for producing Cavendish, Rifle-Cake, or other tobaccos, in combination with the die piece P, actuated by the cam O^1, together with the general combination and arrangement of the machinery, substantially as herein described and illustrated on the drawings.

In witness whereof, we, the said Thomas Cope and George Cope, have hereunto set our hands and seals, this twenty-third day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

THOMAS COPE. [L. S.]
GEORGE COPE. [L. S.]

In the presence of—
J. T. KING.

351 *Gibson's Patent.*

English Letters Patent No. 1516, dated April 30, 1874.

JOHN WILLIAM GIBSON, of Dundalk, England, and JAMES PATRICK KENNEDY, of Cavan, England, and ALEXANDER PRIOR, of Cavan, England.

IMPROVEMENT IN THE MANUFACTURE OF TOBACCO AND OIL, AND IN APPARATUS EMPLOYED THEREIN.

Specifications in pursuance of the conditions of the letters patent filed by the said John William Gibson, James Patrick Kennedy, and Alexander Prior, in the Great Seal Patent Office, on the 27th October, 1874.

To all to whom these presents shall come, we, John William Gibson, of Dundalk, civil engineer, James Patrick Kennedy, tobacco manufacturer, of Cavan, and Alexander Prior, accountant, of Cavan, send greeting:

Whereas Her Most Excellent Majesty Queen Victoria, by letters patent, bearing date the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-four, in the thirty-seventh year of her reign, did, for herself, her heirs, and successors, give and grant unto us, the said John William Gibson, James Patrick Kennedy, and Alexander Prior, her special license, that we, the said John William Gibson, James Patrick Kennedy, and Alexander Prior, our executors, administrators, and assigns, or such others as we, the said John William Gibson, James Patrick Kennedy, and Alexander Prior, our executors, administrators, and assigns, should at any time agree with, and no others, from time to
352 time and at all times thereafter during the time therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "Improvements in the manufacture of Tobacco and Oil, and in Apparatus employed therein," upon the condition (amongst others) that we, the said John William Gibson, James Patrick Kennedy, and Alexander Prior, our executors or administrators, by an instrument in writing under our or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office within six calendar months, and immediately after the date of said letters patent.

Now, know ye, that we, the said John William Gibson, James Patrick Kennedy, and Alexander Prior, do hereby declare the nature of our said invention, and in what manner the same is to be performed, to be particularly described and ascertain in and by the following statement and accompanying drawings, that is to say:

This invention relates to the heating, pressing, and curing of roll or coil tobacco, the apparatus employed being equally applicable for the manufacture of oil, and consists of hollow or cellular chain-

bers, one upper and one lower, each having a central aperture or eye; into these chambers steam, hot air or hot water is introduced for the purpose of heating.

The tobacco or oil to be heated is encircled either by a cylinder or ropes (the said cylinder may be either in two parts bolted together, or a single cylinder), a screen, tube, pipe or sheath fixed to a bottom plate passes through the chambers and tobacco (or substance from which the oil is to be expressed) through the lower chamber, the sheath, and the upper chamber a bolt is passed, an aperture being made in the bench supporting the chambers to admit of so doing, and by means of a nut and spanner the bolt is made to press the tobacco, the sheath rising in the upper chamber as that chamber is brought down by the pressure, so that in lieu of conducting the manufacture as usual in the ordinary press, it is done in sections.

353 The cooling process is accomplished by the admission of compressed air from a receiver or reservoir to the chambers; the receiver may be immersed in a current of cold water to effect a rapid reduction in the temparature, or cold water may be made to circulate through the chambers; or the heating chambers may be replaced by cold plates; or the tobacco may be allowed to cool gradually between the steam chambers. Tobacco manufactured by this process assumes an annulated form, the unsaleable core being dispensed with.

Having now described the nature of the invention, we will proceed to explain the nature and process of manufacture, by aid of the accompanying drawing, of which Figure 1 is a plan of an apparatus embodying our invention. Figure 2, a section of the same. Figure 3, a plan of a bench for the presses. Figure 4, a transverse section of part of the bench, and Figure 5, a section of the sheath and bottom plate or disc, which latter being provided with a central hole, the tube, pipe, or sheath is screwed therein at right angles.

The lower hollow chamber, A, Figures 2 and 4, is placed on the bench B, Figures 3 and 4, and firmly secured to it. The tobacco to be treated is placed or wound round the tube or sheath, B', shown in section, Figure 5, and in the case of coil tobacco is alternated with metal plates, between which and the coils are placed thin wooden discs of a size to match the plates. These wooden discs are stamped out with a knife like that used in making envelopes, from a thin wooden chip, veneer or scale-board, and with a central eye or hole corresponding with that in the plates; and between each such chip and coil, at a convenient place on the surface of the same, a thin metal plate bearing the manufacturer's name, abode, trade-mark, or mark of quality is placed; the roll is similarly placed, save that the scale-board or chip discs, name plates, and metallic discs are only placed at the top and bottom. The sheath B', with the plate supporting and passing through the tobacco, chips and discs, is now placed on the upper chamber and encircled by a cylinder, C, or ropes in the usual way. Over this is placed the top cylinder, A', which fits into the cylinder or over the ropes, and the eye or hole of which
354 admits and encircles the upper end of the sheath. Through

the under chamber, the sheath, and the top chamber a bolt is now passed (an aperture being made in the bench for its admission below), and by means of a nut and spanner this bolt is made to press the tobacco, the sheath rising in the upper chamber as that chamber is brought down by the pressure. The steam, hot water, or hot air, is then admitted by means of india-rubber tubing or metallic pipes, *a*, Figure 1, into both chambers, A, a pipe being provided to carry off the condensed steam, and the tobacco is heated and may be pressed again, or the pressure relaxed as required.

When the tobacco has been sufficiently heated, steam is shut off, and cold water or compressed air is made to circulate through the chambers by means of the pipe *b*, Figure 1, cooling the tobacco; or this may be done by removing the tobacco to plates fitted exactly similarly to the steam chambers, save that they are solid instead of hollow, and that wooden ones may be used. The tobacco being placed between these, a bolt is passed through and pressure is put on as with the stone chambers, or the tobacco may be allowed to cool gradually between the steam chambers. Thus the manufacture is carried on in sections, each roll or suitable number of coils being separately treated; the practice heretofore being to treat in the aggregate a number of such rolls or of such quantities of coils, and to press them by a driving screw instead of a screw in tension, which is less liable to break, except when made of cast-iron.

When the tobacco has cooled down sufficiently it is removed, and the sheath pipe being withdrawn by gentle pressure, the metallic discs, scale-board discs, and name tablets are separated from the tobacco, and the tobacco is found to be impressed with the name or marks from the tablets, the rest of its surface having the impression of the wooden disc, smooth or showing the grain of the timber. The tobacco then thoroughly cured and pressed is fit for sale, being done in a much shorter time than by the ordinary process, and assumes an annular form, the unsalable core being dispensed with.

Instead of the wooden chip or scale-board, calico, canvass, or other textile fabric or mill-board, paper mache or other suitable substance may be used for placing between the metallic disc and the
355 tobacco, such being cut of suitable shape and size as heretofore mentioned, or if the tobacco is made up very dry and of strong quality, the metallic disc may be placed in immediate contact with it, the wooden chip or substitute being dispensed with in that case.

The eye of the top chamber or cooling plate is by preference made to fit over and admit the sheath, but we do not confine ourselves to that position, as we can reverse the sheath with attached plate, and make it run down into and be partly encircled by the lower chamber or cooling plate. The chambers, plates, and discs we construct by preference of circular shape, but they can be made rectangular for the manufacture of stick tobacco or Cavendish, or they can be elliptical for the manufacture of roll or coil tobacco, if desired.

In the manufacture of oil, the subject from which it is to be expressed is placed between the discs, and heat and pressure applied

as required. A little groove is added in the discs and along the cylinder to carry the oil into a receiver.

Having thus described our invention, and the mode of carrying the same into effect, what we claim and desire to secure by letters patent is the improved process and mode of manufacturing tobacco whereby the tobacco assumes an annular form with a central aperture or eye, the characteristic feature of which is that the unsalable core is dispensed with, and the manufacture carried on in sections: each roll or suitable number of coils being separately treated, the coils or rolls being pressed by a screw in tension, the apparatus for effecting which consisting of cellular chambers, one upper and one lower one, having central apertures or eyes, and through which chambers steam, hot air, or water, is introduced for heating the tobacco, which latter is encircled by a cylinder or ropes; a screen, tube, pipe, or sheath fixed to a bottom plate passing through both the chambers and tobacco, a bolt being passed through the lower chamber, the sheath, and the upper chamber, a nut and spanner causing the tobacco to be pressed, the sheath rising in the upper chamber as it is brought down by the pressure, the cooling process being effected by the admission of compressed air from a receiver or reservoir, in the manner and for the purpose precisely as herein mentioned.

356 In witness whereof, we, the said John William Gibson, James Patrick Kennedy, and Alexander Prior, have hereunto set our hands and seals, this twenty-second day of October, in the year of our Lord one thousand eight hundred and seventy-four.

JOHN WILLIAM GIBSON. [L. S.]
JAMES PATRICK KENNEDY. [L. S.]
ALEXANDER PRIOR. [L. S.]

357 *Gerard's Patent.*

English Letters Patent No. 635, dated March 17th, 1854.

JOHN GERARD, of Guernsey, England.

IMPROVEMENT IN MACHINERY FOR CUTTING AND STAMPING SOAP.

Specification in pursuance of the conditions of the letters patent filed by the said John Gerard in the Great Seal Patent Office on the 16th September, 1854.

To all to whom these presents shall come, I, John Gerard, of Guernsey, soap manufacturer, send greeting:

Whereas Her Most Excellent Majesty Queen Victoria, by her royal letters patent, bearing date the seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-four, in the seventh year of her reign, did for herself, her heirs and successors, give and grant unto me, the said John Gerard, her special license that I, the said John Gerard, my executors, administrators, and assigns, or such others as I, the said John Gerard, my execu-

tors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter during the time therein expressed, should and lawfully might make, use, exercise and vend within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "Machinery for Making and Stamping Soap," upon condition (amongst others), that I, the said John Gerard, by an instrument in writing under my hand and seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed, and cause the same to be filed in the
358 Great Seal Patent Office within six calendar months next, and immediately after the date of the said letters patent:

Now, know ye that I, the said John Gerard, do hereby declare that the nature of my said invention, and in what manner the same is to be performed, to be particularly described and the same may be ascertained in and by the following statement and description thereof, together with the accompanying drawings and specications thereof herein contained (that is to say):

My invention consists of machinery for cutting and stamping or marking soap, by which, 1st, the entire block is cut into slabs at one operation; 2ndly, the slabs are cut into bars or cakes at one operation; and, 3rdly, the whole of the bars or cakes in one slab are marked or stamped at once. The said machinery comprises a slab cutting frame bar and cake cutting frames, and stamping frame, with main frames, guide frames, rods, pullies, and gearing. The slab cutter consists of a frame of wood or metal across which a number of wires or blades are fixed at such a distance apart as the slabs are to be in thickness; the frame of the cutter is made sufficiently large to contain as many wires or blades as will cut the entire block into slabs at one cut.

The bar cutter also consists of a frame of wood or metal, with a number of wires or blades across the same at the required distance apart, the frame being sufficiently large to contain as many blades or wires as will cut an entire block (after it has been cut into slabs) into bars at one cut.

The cake cutting frame is similar to the bar cutting frame, only that the wires or blades are fitted across, both longitudinally and transversely. The blades or wires of the cutters are fixed to one side of the frame by a loop or eye, and to screws on the other, so as to be tightened up when required. The frames of the cutters are fitted with pins, wheels, pullies, and guides to work the same and keep them in their proper positions.

The stamper is a frame containing the required number of dies to stamp or mark all the bars or cakes in one slab at one operation. The main frames, guide and travelling rods, blocks, pullies, and gearing, are shown on the drawings, and the mode of working the machines is hereafter explained.

359 Explanation of the Drawing.

The drawings accompanying this specification are laid down to a

scale of one inch to a foot, and are lettered "Gerard's machinery for cutting and stamping soap," and numbered $_{0}^{1}{}_{0}$ and $_{0}^{2}{}_{0}$ respectively.

Fig. 1 is a plan of the slab cutt[r] frame: Fig. 2 is a plan of the bar cutting frame; Fig. 3 is a plan of the stamping or marking frame; Fig. 4 is a plan of the cake cutter; Fig. 5 shows the slab cutt[r] frame attached to a main frame and mode of working it, and also the bar or cake cutting frame attached to a main frame and mode of working it, and also shows the mode in which the stamping frame is fitted and used. In referencing or lettering the different Figs. similar letters are used in each Fig—that is to say, whether the same letter or number occurs in the different Figs. it still applies to the same part of the particular machine, which is shown in a different position, for the better explanation of its form and use.

Reference, Drawing No. 1.

Fig. 1, *a a* side frames of the slab cutter; *b* the cross head; *c c* the wires or blades fastened to the frame at *d* and *e*, and made to tighten up at the sides; *f f* pullies; *g g* two wheels upon which the frame runs; *h* a guide wheel on the cross head; *i i* pins to keep the frame from rising. Fig. 2, *K K* the frames of the bar cutting machine; *l l* the wires or blades; *m m* the pins and tightening screws by which the cutters are fixed to the frame; *n n* sheaves; *o o* hooks to which the cords or chains are attached to connect the bar cutting frame with the main frame. Fig. 3, *r r* apertures in the stamping frame for fitting it to the iron upright rods on the sill; *s* the stamper, which consists of a number of dies *t t*, each of which is lettered with letters required for stamping each bar or cake. Fig. 4, the cake cutting frame.

Drawing No. 2

Fig. 5 *a*, the block of soap resting on the sill, *b*; *c*, the main frame for working the slab cutter *d*, for cutting the soap into the slabs *e e*, by turning the handle *f* (one of which is placed on each side) and pinion *g*, which turn the wheels *h h*, which are fixed upon the shaft of the barrels *i i*, round which the cords *k k* are wound when using the machine; *l l* pullies, round which the cords pass; *m* the wheel on which the slab cutter runs along the bar *n*; *n*[1] a guide rod at the top of the frame, supported by the upright *o o*; *m* a pulley or wheel at the top of the frame, which runs along the bar *n*[1]; *p* a catch, for holding the bar *n* when it is raised into a vertical position for moving the main frame after the slabs are cut; *q* a strut or block, to keep the soap from being drawn forward. Fig. 6, *a* is the block of soap supposed to have been cut into slabs; *b* the sill on which the soap rests; *c c* iron uprights or vertical guide rods for the bar and cake cutting frames; *c*[1] the bar-cutting frame; *d d* the main frame for working the bar-cutting frame and cake-cutting frame, which cuts the slabs into bars *e e* or cakes by turning the handles *f* and pinion *g*, and wheel and barrel *h i*, which winds the cords *k k* by which the bar cutter is drawn down; *l l* cords at-

tached to the upper side of the bar and cake-cutting frames for raising the same, by winding the cords over the pullies *m m* on to the barrel p^1 of the wheel *p*, which is also turned by the pinion *g*; *q* is the stamper, suspended by the pullies *r r* to the frame *u u* by the cords *s s*, by which the stamper is raised and lowered, and stamps the whole of the bars or cakes in one slab or lift at once. The frame which carries the stamper is fixed to the uprights and main frame.

I have now in the best manner I am able described and ascertained the nature of my said invention, and in what manner the same is to be performed. I do not confine myself to the precise form of frames, cutters, &c., shown in the drawings; but I claim the cutters and stampers constructed upon the principle herein described, and fitted to frames and gearing so as to cut a block of soap into any required number of slabs at one operation, and to cut the slabs into any required number of bars or cakes at one operation; and also the stamper for stamping or marking the whole or any given number of the bars or cakes in one slab at one operation.

In witness whereof, I, the said John Gerard, have hereunto set my hand and seal, this 16th day of September, A. D. 1854.

JOHN GERARD. [L. S.]

361 SIEDLER'S REISSUE.

UNITED STATES PATENT OFFICE.

CHARLES SIEDLER, of New York, N. Y.

Improvement in Plug Tobacco.

Specification forming part of letters patent No. 158,604, dated January 12, 1875; reissue No. 7362, dated October 24, 1876; application filed April 26, 1875.

To all whom it may concern:

Whereas letters patent No. 158,604, of the United States of America, were granted to me, Charles Siedler, of New York city, N. Y., bearing date the 12th day of January, 1875, for certain improvements relating to plug tobacco; and whereas I am advised by counsel that said patent is not fully available to me by reason of an insufficient and defective specification, and I have applied for leave to surrender the said patent and to have a new patent issued on an amended specification: Now, therefore, I, the said Charles Siedler, do hereby declare the said invention to be fully described in the following specification:

I have discovered, and successively developed in practice, a means of making and distinguishing tobacco in plugs. I prepare labels or distinguishing pieces of separate material, and impress them into the body of the plugs, one label into each plug, preferably putting the label under the outside wrapper, and giving it a character, by raised letters or analogous devices, which is recognizable through the flexible covering.

The preferable material for my labels I esteem to be sheet-iron

tinned. The preferable form I esteem to be circular. The prefer-
362 able devices I esteem to be marks indicating the quality, origin, or trade-mark. The preferable mode of making the marks apparent is by raising or sinking portions of the surface. To insure a firmer retention of the label I form it with prongs projecting inward into the body of the tobacco plug.

The accompanying drawings form a part of this specification, in which—

Figure 1 is a view of a plug of tobacco, with my label applied, viewed facewise; Fig. 2 is an edge view of the label detached; and Fig. 3 is an edge view of the plug of tobacco, with a section through the label and that portion of the plug immediately adjacent thereto.

Similar letters of reference indicate like parts in all the figures.

A is the body or strongly-compressed main portion of a plug of tobacco. B is a small and tastefully-shaped piece of thin tinned iron, cut by a punch or otherwise into the form desired, and struck up by dies, so as to present on the face the desired letters or marks, and having points *b* bent backwards from its edges. Before giving the plug of tobacco its final pressure the metal B*b* is placed in proper position upon it by an attendant, and by subsequent powerful pressure the label is sunk into the body of the tobacco, so that its face is about flush with the outer surface thereof, and its points *b* sink quite deeply into the most dense mass. It adheres firmly. The points *b* may be widened so as to form a nearly or quite continuous rim sunk into the tobacco, if desired. The plugs thus impressed with the hard labels, presenting the letters in relief, are then wrapped in a large leaf of properly-dampened tobacco, A′, and again powerfully compressed. The label appears beneath the wrapper of the finished plug, and is not liable to be removed by any ordinary or extraordinary cause.

I claim as my invention—

1. A plug of tobacco having a hard label pressed into one of its faces, as specified.

2. A plug of tobacco having a label under its ultimate wrapper, as specified.

3. A plug of tobacco having letters or other decorative and distinguishing marks produced on a hard metallic surface, and pressed, as specified.

363 4. The within-described method of marking plug tobacco, by impressing a thick label into one of its faces, as specified.

5. The within-described method of marking plug tobacco, by impressing a thick label into one of its faces, and covering it with the wrapper A′, as herein specified.

In testimony whereof, I have hereunto set my hand, this 23d day of April, 1875.

CHARLES SIEDLER.

Witnesses:
GEO. D. FINLAY.
FRED. COOL.

364 DEFENDANTS' EXHIBIT "DECISION."

No. 4566. U. S. PATENT OFFICE, *Jan.* 9, 1878.

Before the Examiners-in-Chief, on Appeal.

Application of Miller & Worley for a reissue of patent No. 185,119, dated December 5, 1876.

Finishing Plug Tobacco.

This is an application for reissue to correct certain defects in patent No. 185,119, granted to applicants Dec. 5, 1876, for a mode of finishing tobacco plugs; which patent is not fully available to them in the restricted form in which it was allowed by the office. They propose in effect to restore the claims originally presented by them setting forth the invention as they primarily conceived it, but which they unadvisedly receded from under the criticisms of the office. Experience has now developed the utility and value of the invention and they are here to amend the inadvertence by the statutory remedy.

What was originally set forth and claimed, was, first, a new mode of marking plug tobacco during the process of finishing, and, second, the new article so produced.

The first claim, as now presented, does not differ substantially from that of the original grant, except by being made more specific and clear. It relates purely to the novel process employed, and there can be no objections to its allowance, since it is already the subject of a patent, of which applicant cannot be divested in
365 any case, and no proof of error on the part of the office in allowing it originally has come to light.

The second claim is simply to the product of this specific process, such product being new and unknown in the market prior to applicant's invention, there would also seem to be no objection to its allowance as a subsidiary claim in the same application as that in which the process is detailed. The only reference cited is the patent to D. Eaton, 1874, for enveloping plug tobacco in a paper wrapper in lieu of tobacco leaf. Nothing is found in this patent relating in any degree to the impression of marks into the surface of the tobacco. The drawing shows a label, which we must infer to be printed on or affixed in the ordinary manner.

It is freely admitted by applicant that the surface marking of impressible articles, such as soap, confectionery, &c., with letter or signs, is not novel or patentable. Such articles require no compressive treatment, and the stamp is a mere label, with no other function. On the other hand, it was not known till after applicant's experiments that an elastic material like plug tobacco could be so marked, and it required considerable ingenuity and experimentation to devise a successful mode of accomplishing the feat. Of course, previous to such successful solution of the difficulty, the thing itself so produced did not exist, and it would seem, therefore, to be equally novel and patentable as a new product or article of

C. WORLEY.

366

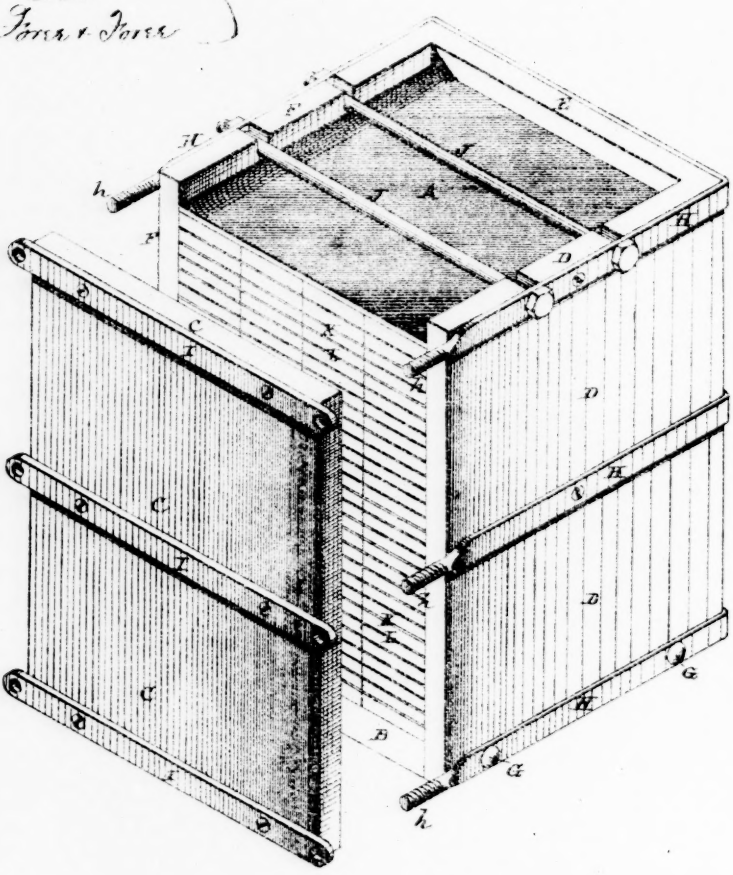
MANUFACTURING PLUG TOBACCO.

No. 181,512.

Patented Aug. 22, 1876.

No 295
Millwood et al
vs.
Foster & Foster

ps. 366.



ATTEST:

Robert Burns
H. Hutchinson

INVENTOR:

Christian Worley
By Knight Bros
Attys

manufacture, with the process itself by which it came to have existence.

While, however, the new claim to the article is intended to be the same as that originally presented, we much prefer the original one for conciseness and directness; and, as in a reissue a change should always be for some statutory object, we would recommend the restoration in substance of the original language of the second claim. With this reservation the decision of the examiner is reversed.

H. H. BATES,
R. L. B. CLARKE,
V. D. STOCKBRIDGE,
Examiners-in-Chief.

(Here follows diagram, marked p. 366.)

367 *Worley's Patent.*

UNITED STATES PATENT OFFICE.

CHRISTIAN WORLEY, of St. Louis, Missouri, Assignor of one-half his right to Henry McCabe, of same place.

IMPROVEMENT IN MANUFACTURING PLUG TOBACCO.

Specification forming part of letters patent No. 181,512, dated August 22, 1876; application filed January 22, 1876.

To all whom it may concern:

Be it known that I, Christian Worley, of St. Louis, in the county of St. Louis, and State of Missouri, have invented a new and useful improvement in the mode of finishing plug tobacco, of which the following is a specification:

The common way to proceed in finishing plug tobacco is to press the bunches into plugs having the form seen in the retail stores. The plugs are next removed from the molds in which they are pressed, and packed in boxes, and the boxes placed in a room, where the tobacco is sweated and cured. The plugs are afterwards taken from the boxes and subjected to a second pressing before they are packed in the boxes for sale.

My improved mode consists in finishing tobacco by placing the plugs in a box in alternate layers with thin metal plates, applying extreme pressure thereto, and subjecting the plugs to dry heat for several hours while they are tightly compressed between the plates, which are in contact with the broad sides of the plugs, and, finally, removing the box and leaving the contents therein until cold, the whole process being adapted to give a fine and smooth finish to the wrapper, and by putting the plug in proper condition,
368 doing away with the tendency to bulge out at the sides, as plugs are apt to do when they have not been thus treated.

The plugs are taken from the finisher and packed directly in the boxes in which they are shipped.

The drawing is a perspective view of my finisher filled with tobacco plugs, one side being removed to show the interior.

The finisher has a top A, and bottom B. Of its four sides, C D E F, the side C is made removable for convenience in packing and unpacking. The top is also removable. The sides D F are secured to the bottom by screws G, which extend through the bottom from side to side. Surrounding the box upon three sides are horizontal straps H H H, ending at the front side C in screws *h*, which pass through the eyes of the strap-bars I I I, by which the front side C is held in place by nuts screwing on the ends *h*. J are stay-bolts, running from side to side across the finisher above the top A. The top A consists of a metallic plate.

The courses of tobacco plugs are shown at K, and the interposed metallic plates at L.

The process is as follows: The plugs, when fresh pressed, are taken from the molds, and a layer of them is laid over the bottom of the finisher. Over this course is laid a smooth metallic plate L, and over the plate another course of tobacco, and so on, the tobacco and plates alternating to the top of the finisher.

The side C and top A are then put in place, and the finisher, with its center, subjected to extreme pressure, and then placed in a room containing very dry air, heated to, say, 140° Fahrenheit, and retained at that temperature for, say, eight hours, at the end of which time it will be found sufficiently cured, and may be at once removed from the finisher, and packed in the boxes or caddies in which it is sold.

I consider it better, however, to allow the tobacco to cool in the finisher. In either case the plugs will be found to have a smooth and hard surface, better, indeed, than can be had by the old and tedious process, where the plugs are subjected to two distinct pressings.

By this process I am enabled to make use of wrappers costing not more than half the price of those before my invention.

369 I am aware that there is not any novelty in, first, the simple finishing of tobacco by placing it in a heated room; and, secondly, the simple pressing of tobacco between metallic plates, and therefore I do not claim this distinct heating and pressing of tobacco broadly; but

What I do claim as new and of my invention, and desire to secure by letters patent, is—

The mode of finishing tobacco, substantially as described, consisting of placing the plugs in a box in alternate layers with thin metal plates, applying extreme pressure thereto, and subjecting the plugs to dry heat of about 140° Fahrenheit for several hours while they are tightly compressed between the plates, which are in contact with the broad sides of the plugs, and finally removing the box, and leaving the contents therein until cold.

CHRISTIAN WORLEY.

Witness:
SAML. KNIGHT.
ROBERT BURNS.

370 *Stipulation.*

United States Circuit Court in and for the District of Kentucky.

ANTON MILLER *et al.*
vs.
S. J. FOREE *et al.* } In Equity. No. 3877.

It is hereby stipulated and agreed that the defendants may offer and use in evidence at the hearing of the above entitled cause with the same force and effect as if regularly put in evidence before a master an uncertified printed patent office copy of the following United States letters patent:

Charles Siedler, "Improvement in plug tobacco," dated January 12th, 1875, and numbered 158,604.

Also certified copies of the following English letters patent:

Thomas and George Cope, "Improvement in machinery for pressing, &c., tobacco," dated October 28th, 1868, and numbered 1396.

J. W. Gibson, *et al.*, "Improvement in the manufacture of tobacco," dated April 30th, 1874, and numbered 1516.

Wm. Clark, "Buttons," dated March 2d, 1865, and numbered 594.

HATCH & PARKINSON,
Complainants' Solicitors.
SAML S. BOYD,
Of Counsel for Defendants.

371 *Testimony.*

ANTON MILLER *et al.*, Complainants,
vs.
S. J. FOREE *et al.*, Respondents. } In Equity.

Testimony taken on the part of the defendants, under the sixty-seventh rule of practice as amended for the courts of equity of the United States, by L. L. Walbridge, special examiner, duly appointed by said court to take depositions in said cause, on Friday, the 18th day of October, 1878, at the office of Samuel S. Boyd, Esq., No. 506 Olive street, St. Louis, Mo.

Present: John E. Hatch, counsel for complainants, and S. S. Boyd, Esq., counsel for defendants.

A. J. JONES, of lawful age, being produced, sworn, and examined as a witness on behalf of the defendants, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. Please state your name, age, residence, and occupation.

A. My name is A. J. Jones; 36 years of age; residence, St. Louis; occupation, shipping clerk for Nave, Goddard & Co., up to last Saturday.

Int. 2. When did [you] first go into the employ of Nave, Goodard & Co.?

A. On the 10th of May, 1872.

Int. 3. Please state whether they ever sold any tobacco manufactured by Boyce Bros., of St. Louis.

(Objected to by complainants' counsel, for the reason that the name and residence of the witness are not set up in the answer.)

A. Yes, sir; they have.

372 Int. 4. When did they first begin to sell such tobacco?

A. I think it was in the latter part of 1872–3, and from that date on to 1875; between 1875 and 1876. I cannot exactly recollect what time we stopped buying of them, but just about the time Boyce and Bros. quit manufacturing.

Int. 5. Please state whether the tobacco that you bought of Boyce and Bros. had any marks on it; if so, what was the character of the marks?

A. Yes, sir; it was impressed in the plug with the "Blackberry" stamp.

Int. 6. Please look at the sample now shown you, and state how that corresponds with or differs from the tobacco sold to Nave, Goddard & Co. by Boyce & Bros. (Sample shown.)

A. It looks just like the same tobacco, and has the same stamp impressed in the plug of tobacco.

Int. 7. How much of the tobacco did Nave, Goddard & Co. sell?

A. I can't tell exactly how much, but we sold a great deal of it; we kept it in stock all the time.

(Sample referred to offered in evidence, and marked Defendant's Exhibit "Boyce Plug.")

Int. 8. During what period of time did Nave, Goddard & Co. sell tobacco having the mark "Blackberry" on like the sample you hold in your hand?

A. The tobacco that had that impression on it; all the tobacco was not impressed that way; some plugs in the caddy for samples were impressed this way.

Int. 9. For how long did you sell the tobacco having such impressions on it?

A. We sold from 1873 to the time they quit manufacturing.

Int. 10. To the time Boyce Bros. quit manufacturing?

A. Yes, sir.

Cross-examination by J. E. Hatch, Esq.:

X Int. 1. What did you say your position was in Nave, Goddard & Co.'s?

A. Shipping clerk.

X Int. 2. How long have you been shipping clerk there?

373 A. Since the 11th of May, 1872.

X Int. 3. During the time you mention, from 1873 to 1875, what did you personally have to do with the tobbaco sold by Nave, Goddard & Co.?

A. I shipped the tobacco and received a great deal of tobacco myself, and gave orders for the tobacco when I wanted it to ship.

X Int. 4. The tobacco was packed in caddies, wasn't it?

A. Yes, sir.

X Int. 5. And purchased by you in caddies?

A. Well, it was purchased by Nave, Goddard & Co. in caddies, although I gave an order when I wanted it to ship.

X Int. 6. It was purchased by Nave, Goddard & Co. in caddies?

A. Yes, sir.

X Int. 7. And shipped in caddies?

A. Yes, sir.

X Int. 8. You didn't open the caddies when with Nave, Goddard & Co.?

A. Not every caddy. I opened one once in a while for a sample.

X Int. 9. Who were the members of the firm of Nave, Goddard & Co.?

A. Abram Nave, J. W. Goddard and L. J. Pack.

X. Int. 10. How much of the tobacco made by Boyce Brothers were you accustomed to handle annually?

A. I cannot state how much, it was a great deal though. I can't tell. We would buy sometimes forty or fifty caddies, or twenty-five or ten caddies, whatever we wanted. I couldn't exactly state the number that way.

X Int. 11. How many caddies of tobacco purchased from Boyce by Nave, Goddard & Co. during the time you mention do you suppose you opened?

A. I can't tell that.

X Int. 12. Make an estimate.

A. Oh! I can't tell, whenever a salesman wanted a sample, came in off the route, he would open a caddy and get a sample, and we had samples in the drum all the time.

374 X Int. 13. In opening one of these caddies of tobacco purchased from Boyce Brothers by Nave, Goddard & Co., how many plugs did you ordinarily find that were marked like the sample here referred to?

A. Sometimes one plug on the top, or two plugs. I don't know how many more.

X Int. 14. Always sure to find some, were you?

A. Generally found them. I didn't open every caddy. It was not me that opened all the caddies.

X Int. 15. How many did you see?

A. Well, I have seen a great many, probably half dozen or a dozen.

X Int. 16. In all the tobacco you have ever opened there?

A. Well, when I saw it opened.

X Int. 17. Have you ever seen twelve plugs of tobacco marked "Blackberry" in the tobacco you have opened at Nave, Goddard & Co.'s?

A. I don't know whether I have seen that many or not.

X Int. 18. Have you ever seen six?

A. Yes; I think I have.

X Int. 19. You think you have, but do you swear you have.

A. Might not be six; I know I have seen some.

X Int. 20. Have you ever seen three?

A. Yes, sir.

X Int. 21. You swear you have?

A. Yes; I have seen three. I have seen that many in the sample drum.

X Int. 22. I mean in the tobacco you opened from the caddies?

A. Yes; I have seen three.

X Int. 23. You swear to that, do you?

A. Yes, sir.

X Int. 24. What style of tobacco was it: light like this plug, or darker?

A. Something like that; some might be a little darker wrapper, and a little lighter, but it was about like that; I can't exactly tell whether it was a little darker or a lighter.

375 X Int. 25. Do you know where this plug came from offered here in your direct examination?

A. No, sir; I dont know where it came from.

X Int. 26. When did you first see it?

A. Mr. Boyce had it at the office, or one just like that. I don't say whether that one, it looks like it.

X Int. 27. When?

A. He had one down to the office yesterday, and he had one about six or eight months ago. I saw it.

X Int. 28. What did Mr. Boyce say to you about that tobacco at the time he was there?

A. He asked me if I recollected ever buying that tobacco, I told him I did.

Signature waived.

CHARLES F. LOKER, being produced, sworn, and examined on the part of the defendants, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. What is your name, age, residence, and occupation?

A. My name is Charles F. Loker; age twenty-nine; I am not in business now, at present; I reside in St Louis.

Int. 2. Please state whether you were ever in the employ of Boyce Brothers in St. Louis.

A. Yes, sir; I was with Mr Boyce in 1869. I think it was in February or March I went there.

Int. 3. Who composed the firm?

A. First—when I went there it was Mr. Joseph Boyce himself, afterwards his brother came in, and it was Boyce Bros.

Int. 4. What were your duties while in their employ?

A. I packed the tobacco, and untied it, that is, picked it in the caddies and untied the leaf, sometimes helped to fill the moulds.

Int. 5. Please state if there was any peculiarity in the mode of manufacturing this tobacco as far as marking is concerned, while you were there?

376 (The deposition of this witness is objected to for the reason that the name and residence are not pleaded in the answer, as required by statute.)

A. Yes, sir; there was one peculiarity—they had a plug marked "Blackberry."

Int. 6. In what way was that plug marked "Blackberry," by what process?

A. On the bottom of one of the blocks there was a strip of metal with letters raised on it in such a way that it pressed the word "Blackberry" in the plug when it was placed under a pressure.

Int. 7. You say there was a plate on the blocks, what do you mean by block?

A. The block that sinks into what is called a cell to form the shape of the tobacco, to give the pressure.

Int. 8. At what stage of the manufacture of the tobacco was this impression made?

A. While it was in the mold.

Int. 9. What stage of the manufacture is that, early or later stage?

A. Just when it is being pressed, finishing it up. This is the last process it passes through before putting in the package for shipping. Sometimes the tobacco goes through the finisher and sometimes not.

Int. 10. Please look at the sample Defendants' "Exhibit Boyce Plug," and state how that corresponds with or differs from the tobacco of which you have been speaking, as far as marking is concerned?

A. It looks like that, very similar, done in the same manner.

Int. 11. What was done by Boyce Brothers with the tobacco that was manufactured and marked in that way?

A. Sold to the trade, same as any other tobacco.

Int. 12. Do you know where these molds came from by which this impression was made, of your own knowledge?

A. Yes, sir; they were bought from Fisher & Harris; Mr. Boyce bought out the firm and started the manufactory himself.

Int. 13. Do you know personally of any sales made of that tobacco, that is, did you have anything to do with any sales of tobacco so marked?

377 A. I carried two, probably three—I won't be certain—packages of it to a party here in town.

Int. 14. How long were you with Boyce Bros.?

A. I was there about three months; I think two or three months.

Cross-examination by JOHN E. HATCH, Esq.:

X Int. 1. In what year?

A. 1869. I went there in February.

X Int. 2. How many sets of frames did Mr. Boyce have at that time?

A. One.

X Int. 3. Only one?

A. Yes, sir.

X Int. 4. How many frames were there in a set?

A. I think thirteen, if I am not mistaken; that is the general run of a set—thirteen frames.

X Int. 5. What size tobacco did they make?

A. Six-inch work; what is called six-inch work; same style of plug as this.

X Int. 6. How many blocks were there to each frame?

A. I can't tell now whether ten or twelve blocks to each frame then, or how many, or twenty-four. I know there were not twelve, because that would be twelve-inch work, but there may have been twenty-four, thirty-six, or forty-eight.

X Int. 7. Supposing it to be twenty-four blocks, as you say, and thirteen frames to the set, that would be 312 plugs that would be made by one pressure, would it?

A. I suppose so; I haven't figured it up.

X Int. 8. And in making these 312 plugs, as I understand now, there would be but one plug that would have any mark on it?

A. That is right, sir.

X Int. 9. How were the letters made on the back of the block that had the mark?

A. It was a strip that run through the block, and these letters were raised above, and run directly through the middle of the block.

X Int. 10. Letters about the size of these—as this plug?

A. Yes; about the same sized strip; was sunk into the face
378 of the plug; these letters were raised.

X Int. 11. Were they letters with sharp, clear edges?

A. I can't say exactly sharp, clear edges; probably they were when new.

X Int. 12. Did you see that in operation?

A. Yes, sir.

X Int. 13. Did you see the tobacco when it came out?

A. Yes, sir.

X Int. 14. After the tobacco was taken out from these molds was it not sometimes put in the finisher?

A. Bright tobacco was sometimes put in the finisher, I believe; I don't remember particularly about that, but the black and bright all went through the same set of molds, sometimes packed in caddies direct from the molds, sometimes in the finisher, I suppose. I have no distinct recollection of it; I was new in the business; I didn't take any notice of such things.

X Int. 15. It is the usual practice, is it not, when tobacco comes out from the molds to put it in the finisher between iron plates for additional compression?

A. Yes, sir; it is; that is, for black tobacco, but not always for bright tobacco.

X Int. 16. Did you ever notice this tobacco particularly after it had been entirely finished and had been packed away in the caddies, and stood for some time and then a caddy opened?

A. Well, I can't say that I have. I have packed a number of caddies with it.

X Int. 17. When you say you have packed a number of caddies with it you mean a number of caddies each plug of which was marked with the brand?

A. I don't remember now whether I did or not. I packed the caddies as they came from the molds.

X Int. 18. How many such plugs as that would be in a caddy ordinarily?

A. It is hard to say; about twenty pound caddies ought to be. I don't know the weight of that; looks like might be four to the pound; ought to be eighty plugs like that in a caddy.

X Int. 19. How long would it take to make eighty plugs
379 like that with the mechanism you had?

A. I don't know how long. It all has to go in the same pressure in the mold, would take as long to make ten in a mold as a full set.

X Int. 20. How many turns did you ordinarily make per day with that set of molds?

A. That I can't say.

X Int. 21. Not over two, did you?

A. Yes; I believe I did.

X Int. 22. Over three?

A. I think we made at least three. I had very little to do with pressing.

X Int. 23. If you made three turns with that set of molds per day, that would make three plugs like that you could make in a day?

A. Yes, sir.

X Int. 24. You say a caddy of eighty plugs would take you about a month, would it not?

A. I don't know; they may have pressed extra plugs just for this, and put them in, I can't tell.

X Int. 25. How could they press extra plugs like that if they had but one mold, and had to use that in connection with the set?

A. They could use one frame at a time without running the set through.

X Int. 26. Did you ever see tobacco made with one frame only?

A. Yes; I have made them, made it for samples.

X Int. 27. I mean with one block in a frame?

A. No; I have never seen it with one block.

X Int. 28. Did you ever see any caddies packed at Boyce & Brothers or Boyce's while you were there, with tobacco, all of which was marked "Blackberry"?

A. Not every plug, no, sir; not that I can remember of.

X Int. 29. Now, is not this the fact, wasn't that set of frames run in the ordinary way, and the tobacco packed in the ordinary way, without any regard to the word "Blackberry," but all packed just as it happened to come?

A. No, sir; it was not, because I was told to keep in on the
380 outside, to keep the word "Blackberry" so it would show.

Mr. Boyce told me he was trying to get some parties here to take hold of the thing.

X Int. 30. Did he ever get anybody here to take hold of it?

A. I don't know whether he did or not; I left immediately after.

X Int. 31 You never knew that he got parties to take hold of that?

A. Not that I know of; I knew nothing of Mr. Boyce's business after I left; he may have got a dozen for all I know.

X Int. 32. You never knew of his getting one?

A. No, sir.

X Int. 33. You say you carried two or three packages of this tobacco here in town; to whom did you carry them?

A. To Mr. Dowell, corner Third and Washington avenue, about where the bridge is now.

X Int. 34. Is he in business now?

A. No, sir.

X Int. 35. Do you know where he is?

A. With Boyce now, I believe; he was then in the grocery business there.

X Int. 36. To whom else did you carry them?

A. I can't remember anybody else now; the caddies were there, and he asked me to take them, and I did so.

X Int. 37. Do you know how those caddies were packed that you took there?

A. No, sir; out of some of the stock—general stock.

X Int. 38. How do you know that caddy had a single plug with "Blackberry" on it if you didn't see it packed?

A. I can't swear I did see it packed.

X Int. 39. But you are on oath.

A. I say I cannot swear I did see it packed.

X Int. 40. You can't swear it had a single plug of "Blackberry" in it, can you?

A. No, sir; I cannot.

X Int. 41. How was the black tobacco prepared at that time at Boyce's?

A. It had black filler and black wrapper in the same way as the bright, except it was rubbed with alcohol, and the bright is put in the drying-room, and dried and taken out, and the black tobacco is packed in boxes or trays, right from the tables either.

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X Int. 42. How is tobacco moistened there?

A. They do it with a broom; cased with liquorice and sugar.

X Int. 43. How do you know he bought this set of molds from Fisher & Harris?

A. I know he told me so.

X Int. 44. You don't know of your own knowledge?

A. No, sir.

X Int. 45. It is merely hearsay?

A. That is the only way I know it.

X Int. 46. Are Miller & Worley, the complainants in this suit, prosecuting you for infringement in a patent of theirs in regard to manufacturing tobacco?

A. Yes, sir.

X Int. 47. You are a special friend of Miller and Worley's?

A. I think I have always been; there is no enmity between us at all.

X Int. 48. You don't consider at all the fact that they are pros-

ecuting you as an infringer on their rights in their patent interferes with your friendship?

A. It never has interfered at all with our friendship since the thing came out.

X Int. 49. You have a friendly, brotherly feeling towards them?

A. I don't know exactly as it is a brotherly feeling: it is a friendly feeling.

X Int. 50. It is very natural, isn't it, a man being prosecuted in this way, should have a brotherly feeling towards his prosecutors?

A. I don't know that there is anything very natural in it, but it has led to no enmity between Miller & Worley and ourselves. I know we are just as friendly as ever.

X Int. 51. Do you know how that impression that is made in the plug that is offered in evidence was formed?

A. No, sir; I don't. It can be done by letters separate; many ways it can be done.

382 X Int. 52. You stated the work done in Boyce & Brothers' place was done in the same way as that?

A. The impression appeared the same as that on that plug.

X Int. 53. You don't know whether it was produced in the same way?

A. I can't tell, because I never seen that plug made that I know of. I might have seen the plug before.

X Int. 54. Doesn't this plug look like a plug of hard dried tobacco that in a dry state was impressed with these letters?

A. Well, now I would not say that it does. It is impossible for me to tell that. I wouldn't like to express an opinion on that.

X Int. 55. After tobacco is pressed in the molds, does it not often swell and expand when it is taken out?

A. Sometimes it does; yes, sir.

X Int. 56. The tobacco made there at Boyce & Brothers I suppose was not an exception to that rule?

A. Like any other manufactory, liable to the same causes of nature.

X Int. 57. Did you say you had ever seen this tobacco after it was taken out from the caddies in which it had been packed?

A. I have seen some samples round the office there in the factory.

X Int. 58. But after the tobacco had been packed in the caddy and stood for some time, and then the caddy opened, have you ever seen the tobacco that was taken out?

A. I have seen it in the office. I don't remember seeing it in the factory. I may have seen it a dozen times and it escaped my memory.

X Int. 59. You don't remember anything of the kind?

A. No, sir; excepting the samples in the office.

X Int. 60. The samples in the office were ordinarily taken out before they were packed in the caddy, were they not?

A. They would be in the caddy I suppose to get age on them. I suppose to keep them from swelling. I don't know how Mr. Boyce took his samples out, because I had nothing to do with the office.

X. Int. 61. Does tobacco generally swell in the caddy?

A. It don't swell if the caddy is well nailed and the to-
383 bacco properly cured before it is put in and kept a certain length of time; it goes through a different process. Some tobacco will swell and some not. It depends altogether on the way it is put up and the state of the weather.

X Int. 62. When tobacco swells, wouldn't these letters swell out from the marked plug somewhat?

A. If the caddy is kept long enough, I don't think it would swell any more than any other piece of tobacco.

X Int. 63. If the tobacco has a tendency to swell in the caddy, there being these vacant spaces, why wouldn't it swell up in the vacant spaces?

A. It probably would swell, unless it is kept under pressure and put up in the right order. I don't think it would swell to any great extent; I have taken tobacco and made an impression on it and let it stand three weeks nearly without putting a pressure on it all, and it has not swelled.

X Int. 64. Did Christian Peper testify as one of your witnesses in the suit you had and have still pending against Miller & Worley?

A. I have no suit against Miller & Worley.

X Int. 65. I mean the suit of theirs pending against you.

A. Yes, sir; he did.

X Int. 66. Was the tobacco made by Boyce at the time you were with him hand-cased at all?

A. Yes, sir.

X Int. 67. How are you at present engaged in business just now?

A. Just now I am not really in business; I made an assignment the 11th of this month; trying to settle up and fix up to start in again.

X Int. 68. Hasn't there been some conversation between you and Christian Peper in reference to Mr. Peper's assisting you in the matter, either by helping you to start up or employing you?

A. No, sir; I haven't spoken to any manufacturer except Mr. Liggett; I told him I might start up, and I might want a situation, I couldn't tell.

X Int. 69. Is that Liggett of Liggett & Myers?

A. Yes, sir.

384 X Int. 70. What did Mr. Liggett reply to that?

A. He said nothing at all. He said there might be a place vacant in New England or Pennsylvania.

X Int. 71. That is, in his employ?

A. In his employ; but he didn't know whether other salesmen would consent to give up a portion of the work or not.

X Int. 72. Liggett & Myers are interested in this case, are they not?

A. I don't know; I think so. Every manufacturer is interested in it.

X Int. 73. Liggett & Myers have been using the mark which we claim an infringement, have they not?

A. I don't know whether they have been using this mark, but they have been using division lines.

X Int. 74. Who else besides Leggett & Meyers are active in the defense of this suit in St. Louis?

A. I don't know. I suppose every one that is interested in the mark.

X Int. 75. Who else are assisting in the defense, isn't Christian Peper?

A. Well, I can't say that he is assisting: he spoke of it: that the thing ought to be defended.

X Int. 76. He spoke to you about the thing?

A. No: he never spoke to me about it: I never had any conversation with him on this point.

X Int. 77. Who did he tell the thing ought to be defended?

A. Mr. Liggett: I am not certain Mr. Liggett told me.

Redirect examination by S. S. Boyd, Esq.:

Int. 15. Please look at the exhibit now shown you and state what it is.

A. It has the appearance of being that same frame.

Int. 16. How does the block having on it the word "Blackberry" compare with the block of which you have been speaking?

A. It is the same size block.

Int. 17. Can you tell whether or not that is the block used in Boyce's factory?

385 A. It has every appearance of being, but I cannot say it was the same block. It is ten years ago since I saw it nearly.

Int. 18. Do you note any difference in the appearance of that from the blocks that were used in Boyce's factory?

A. No, sir: I dont notice any difference.

Re-examination by J. E. Hayden, Esq.:

X Int. 78. Can you swear positively that is the block used at Boyce's while you were there?

A. No, I cannot swear: I cannot exactly swear it was, but I am so certain I would swear to it almost, because it is the identical thing.

Signature waived.

Joseph Boyce, being produced, sworn, and examined as a witness on the part of the defendants, deposes and says:

Direct examination by S. S. Boyd, Esq.:

Int. 1. What is your name, age, residence, and occupation?

A. My name is Joseph Boyce: I reside 1611 Hickory street, St. Louis: occupation, dealer in tobacco machinery at present. I was a tobacco manufacturer before that, but that is my present occupation.

Int. 2. When did you commence manufacturing tobacco?

A. It was along in February, 1869.

Int. 3. At what place?

A. 111 Washington avenue, St. Louis.

Int. 4. Did you purchase any one out or start with a new factory?

A. I purchased a factory of Fisher & Harris.

Int. 5. What portion of the factory did you buy?

A. I bought all their machinery.

Int. 6. Including the molds?

A. Including the molds and presses.

Int. 7. Please look at the frame marked "Defendants' Exhibit Blackberry Model," and state what is.

386 A. That is a block and frame, a set of molds I purchased from Fisher in the sale of their establishment to me, that is a portion of the set.

Int. 8. What change has been made in the frame since you purchased it?

A. None whatever.

Int. 9. Do you know whether or not that frame had been used by Harris and Fisher prior to your purchase?

A. Yes, sir.

Int. 10. How do you know it?

A. I know it from the condition it was in when I bought it. I know it from tobacco I had bought from them before that time.

Int. 11. How would the tobacco you bought from them prior to that time indicate to you that particular frame had been used.

A. It had the word "Blackberry" impressed on it.

Int. 12. Please look at the sample marked Defendants' Exhibit "Boyce Plug," and state how that corresponds with or differs from to tobacco you saw made by Harris prior to your purchase of this frame?

A. There is no difference at all. It is the same.

Int. 13. After you purchased this frame and the block with the word "Blackberry" on it from Harris, what did you do with it?

A. I purchased it from Fisher, my dealings were with Fisher. I continued the manufacture of tobacco as they had done previous to my purchase, just continued the manufacture of tobacco.

Int. 14. What use, if any, did you make of the block with the word "Blackberry" on it?

A. Well, I used it to impress this impression on the plug, and I put several of the plugs so marked into the trade and tried to get them to give me an order for one hundred caddies, and I would put any impression or trade mark they would desire in that manner on their plugs.

Int. 15. For how long a time did you manufacture tobacco having upon it the word "Blackberry" impressed by that mould?

A. From 1869 to about 1876.

Int. 16. What did you do with the tobacco manufactured having upon it this mark?

387 A. I packed it with my other tobaccos that had no marks, and put it in the general trade.

Int. 17. How generally did you sell that?

A. Whenever we sold six-inch work we sold this with it.

Int. 18. In what parts of the country did you sell it?

A. Principally in St. Louis; we had a local trade, at that time, on Second street; in fact, I confined myself to that trade.

Int. 19. About how many plugs of tobacco bearing on it this mark would be in a single caddy?

A. Well, in some cases there would be one; in other cases two.

Int. 20. How many caddies of tobacco, during the time you were using these molds, did you sell in which there was one or more plugs having on it the word "Blackberry"?

A. That would depend altogether on the bill I would sell. Sometimes I would sell a bill of ten caddies, and sometimes twenty-five and fifty caddies, as the case would be, and tobacco so impressed would be one in one hundred and eighty; sometimes we would get one plug in a caddy and sometimes two, and sometimes would not put in any for two or three caddies more, till they would come round to pack up those.

Int. 21. In packing those plugs having on them the word "Blackberry" in a caddy, was there any particular place at which that plug would be put?

A. Oh, none at all; no, sir.

Int. 22. Can you state how much tobacco you manufactured during that time in the frame of which this mold formed part?

A. Well, I cannot. I might approximate. I can't tell how much.

Int. 23. One thousand pounds?

A. Oh, yes; five or six thousand pounds, at least, out of that set of molds.

Int. 24. Then there would be, I understand, five or six thousand pounds of plug tobacco, one plug of which would have on it this word "Blackberry," during that time?

A. There would be a great many plugs in five or six thousand pounds that would have that mark on it. There would be one plug in
180 plugs weighing three to the pound or four to the pound that
388 would be impressed with the particular impression, so that in a caddy of twenty pounds there would be one or two plugs that would have that impression on it.

Cross-examination by Jno. E. Hatch, Esq.:

X Int. 1. In this frame there are fifteen plugs, I believe?

A. Yes, sir.

X Int. 2. How many frames did you have to the set?

A. Twelve.

X Int. 3. How many set of frames did you have when you begun?

A. I don't remember whether there was any other than that one at the time. I purchased others afterwards as my demands would require, or orders.

X Int. 4. How many ordinarily did you have after you got to running?

A. Well, we had two or three, I think; about three set of six-inch molds is my recollection.

X Int. 5. Did you have other sets of different-sized molds?

A. Yes; twelve, nine, and one and one-half, and six; all sizes.

X Int. 6. How many sets of molds in all did you have after you got started?

A. You mean after I——

X Int. 7. After you got your business in regular running shape—say a year or two after you began?

A. In a year or two I suppose I had in all about seven or eight sets, but I was buying constantly. After that I would see a set of molds that would suit me, probably a half dozen set of molds that would be at auction, and I would buy them and sell some of them, so on that way.

X Int. 8. About how many sets of molds, of all kinds, did you run the last four or five years of your business?

A. You mean how many did I run in my manufactory, or how many I was possessed of?

X Int. 9. Run in your manufactory?

A. About twelve to fifteen set.

X Int. 10. About how many did you keep in operation at a time?

389 A. That would depend altogether on the demand of the trade; we always had not less than two or three styles of work coming out; some days we run on one style, and other days various styles, but nearly all one class of work.

X Int. 11. In running this set of molds that you bought of Fisher about how many turns would you make per day?

A. On that class of work?

X Int. 12. Yes, sir.

A. Well, I suppose I would use them about six times a day, three in the morning and three in the afternoon; I think we would fill the work up about that often.

X Int. 13. How continuously did you run this set?

A. You mean from the time I purchased it? We run it from the time I begin until I quit the business.

X Int. 14. Almost continuously?

A. Yes, sir; some weeks I run six and sometimes twelve inch, as a general thing always making six-inch work. The principal time I was manufacturing to the time I quit, we had no trade on heavy work, except outside of the city—that I couldn't depend on—and I had to keep up my brand on six-inch work.

X Int. 15. There being 180 plugs made by one turn, and you say about four to the pound, that would be about 45 pounds of tobacco to a single turn?

A. About that.

X Int. 16. Did you find a pretty good market for your tobacco here?

A. Yes, at the outset a very good market.

X Int. 17. A first-class article of tobacco?

A. Yes, sir.

X Int. 18. Never had any unusual complaint about it?

A. No, never had any unusual complaint about our tobacco.

X Int. 19. And run that set of molds almost continuously?

A. Yes, sir.

X Int. 20. When you would be running that set, about how many of your other sets would you run at the same time ordinarily?

A. That depended—if we were pushed, two or three; frequently we were pushed on six-inch work, we had to run as many as
390 three or four sets of six-inch work; several contracts forced us to run our work very heavily on six-inch work.

X Int. 21. So you made more tobacco from the other sets of molds than you did from this, taking it on an average?

A. Well, I would not say that. It depended altogether, of course, if we run three sets of molds in connection that would be making three times as much without making any impression as with the set.

X Int. 22. As near as you can tell, about how did it average? How would the tobacco made from this set of molds average in the amount with all the rest of the tobacco you made, as near as you can state?

A. About—say one third.

X Int. 23. This was about one third of your product?

A. Yes, sir.

X Int. 24. Give the name of the Mr. Fisher from whom you purchased this set of molds?

A. I don't know his initials. I know his first name is Clayton. Either Clayton F. or S. Fisher.

X Int. 25. How is he employed now?

A. I think he is with the St. Louis Times.

X Int. 26. Do you know how long he had been in the business when you purchased of him?

A. I think about a year and a half, or two years, possibly.

X Int. 27. After you began to operate that set of molds yourself, did you ever make any changes in it?

A. No, sir.

X Int. 28. All the time it was in your possession it was the same as it was when you purchased it from Mr. Fisher?

A. The very same, identically.

X Int. 29. You spoke in your direct examination of having offered certain parties that if they would take 100 caddies in a lot you would mark their name on the tobacco?

A. Yes, sir.

X Int. 30. What parties do you remember to have made that proposition to?

A. I made that proposition to James A. Jackson & Co., and Senter, Collier & Rankin, and Norris, Taylor & Co., and there might have been some others.

391 X Int. 31. That is all you recollect now?

A. Yes; just now.

X Int. 32. Do you remember the person of the firm of Jackson & Co. you made the offer to?

A. Yes; I spoke to James A. Jackson himself.

X Int. 33. Who is Senter, Collier & Rankin?

A. That was to Mr. John Collier.

X Int. 34. Who is Norris, Taylor & Co.?

A. I spoke to L. E. Taylor, and I might have spoken to other members of the firm, but I don't recall it.

X Int. 35. But not one of them accepted your proposition?

A. No, sir.

X Int. 36. What reason did they give you for not accepting it?

A. Well, they thought they didn't care to buy that much tobacco at once. They could send and get their tobaccos from me in one, five, and twenty caddies, as they required it, and as I hadn't established full reputation of my brands at that time they didn't feel disposed to do that. One hundred caddies of tobacco was a considerable order, and the reason I wanted them to take one hundred caddies was to overcome any expense to be attached to getting in the plates and having them changed, &c.

X Int. 37. About what time in your business, that is, towards the early or latter part, when was it that you made those proposals to Jackson, Collier, and Taylor?

A. I made them to Collier and Taylor, I think, along about 1869, as soon as I came in possession of it. I saw advantages would arise from it, and it was not a great while after that, I would judge probably a month or so after that I spoke to Mr. Collier, that I tried to interest Mr. Jackson in it, along about 1869 or 1870. I think the latter part of 1869, because I got my goods in there at that time.

X Int. 38. Did you ever contemplate taking out a patent for that?

A. If I could have got the orders from Jackson and those gentlemen I have mentioned I would have patented the arrangement then, and that is why I didn't get the patent, because I could not get assistance from them in the expense of it. I so told them at the
392 time I would have the arrangement patented, and that they could assuredly count on having all their plugs marked distinctly with whatever brand or design. I didn't care what it was. I showed them the process and they were pleased with it, but didn't feel disposed to give me an order for that amount of tobacco.

X Int. 39. So you didn't take out a patent?

A. I didn't take out a patent.

X Int. 40. Have you recently had an idea of taking out a patent?

A. We contemplated doing it.

X Int. 41. You say "we."

A. I speak of Boyce & Brothers.

X Int. 42. Since when did the firm of Boyce & Brothers dissolve?

A. They never dissolved.

X Int. 43. Still in business as Boyce & Brothers?

A. Yes, sir.

X Int. 44. When you say "we" contemplated taking out a patent recently, what date does that mean?

A. In the last year.

X Int. 45. What was the occasion, during the last year, that made you contemplate taking out a patent on that?

A. Well, I felt I was entitled to it. I had spoken to other parties several years ago of the advantages that would arise from it, and after we got to manufacturing we found Miller and Worley had ob-

tained our arrangement, and I felt I was not treated right in the matter, and I proposed to make application for a patent and show why we were not treated right.

X Int. 46. Who did you make the proposition to?

A. I made the proposition to—you mean to whom I made the proposition?

X Int. 47. You say you proposed to take out a patent; I ask who did you make that proposition to?

A. I don't know that I made it to anybody except my brother. I went to several parties for assistance to help me get it out.

X Int. 48. What parties?

A. Christian Peper and Liggett & Myers.

393 X Int. 49. Did they promise you assistance?

A. They told me if I wished to get that patent out, whatever expense would be attached to it they would advance me the money.

X Int. 50. Did they give reasons for advancing the money for that purpose?

A. None; only they felt I had been badly treated in the matter; that it was my—not original idea exactly, but that I first impressed the tobacco and showed the trade its advantages.

X Int. 51. How would Liggett & Myers and Peper get their recompense for the money they advanced for obtaining the patent?

A. As I earned or made money in business I was to refund it to them.

X Int. 52. Were they to have any interest in the patent when obtained?

A. Well, we were not settled on that yet—not fully settled on what would be done in that respect.

X Int. 53. Did you make an effort to obtain a patent?

A. None; only taking some testimony in regard to it, and what other preliminaries we have to go on with.

X Int. 54. Did you take a trip to Virginia about it?

A. Oh, yes. We understood this was in operation before. We understood there were parties in Virginia that had used this before the war, and before we could make application for a patent that had to be ferreted out, and I went there. We understood certain parties there had used this, and I went and made an examination, and found such was not the case.

X Int. 55. Who were those parties?

A. That I heard used this?

X Int. 56. Yes; and what parties did you see?

(Counsel for defendants objected.)

A. I saw Messrs. Turpin; I saw Tarborough; I saw Cardwell, a mold manufacturer; and I saw Palmer.

X Int. 57. Where do they reside?

A. Richmond, Virginia. Of those I named just now, I saw J. Lee Jones; but those I have named were parties, with the exception of the mold manufacturers that we heard had used this. I went there, and they told me they had never done anything of the

394 kind. Then I went to Messrs. Palmer, mold manufacturers, and also to Cardwell, and they said they never made any molds nor anything whereby to make an impression on the face of the tobacco.

X Int. 58. Did you ever have a talk with Mr. Fisher, from whom you purchased those molds, about his taking out a patent and assigning it to you?

A. Yes, sir.

X Int. 59. When did you have that talk?

A. In the last six or seven months. When we were to apply for this patent there were certain forms we had to conform to of laws in the Patent Office to get this patent. We had to have Mr. Fisher as the original inventor to make the application, and he was to assign the patent to me.

X Int. 60. Did he decline to make the application?

A. Well, not directly. He said "well, I will see about it, and I will look into it," and put us off from day to day and week to week, until the thing stands just in the same way now as it did then.

X Int. 61. Did you have an application prepared.

A. We had an application prepared; yes, sir.

X Int. 62. Who prepared it?

A. It was drawn by Judge John H. O'Neill.

X Int. 63. Did you have a drawing made?

A. We had a drawing made; yes, sir.

X Int. 64. Was the drawing witnessed?

A. I think so.

X Int. 65. Who witnessed it?

A. I can't tell you that.

X Int. 66. Was it Herthel Brothers?

A. It was made by Herthel Brothers, but I have forgotten who witnessed it. It might have been possible myself and Judge O'Neill, but on that I am not sure.

X Int. 67. Any assignment of the matter prepared from Mr. Fisher to you?

A. Yes, sir.

Int. 68. Mr. Fisher then never signed the papers?

A. He has never signed these papers.

X Int. 69. Who besides yourself talked with Mr. Fisher and endeavored to get these papers signed?

395 A. I was never present when anybody talked to him except myself.

X Int. 70. Did you ever hear of Christian Peper going up there?

A. I have; yes, sir.

X Int. 71. He was interested in having that patent taken out, wasn't he?

A. That would have been determined after the patent had been gained; we made no arrangement until that was effected.

X Int. 72. Did Mr. Liggett make an effort to have these papers executed, do you know?

A. I don't think he did.

X Int. 73. What counsel did you consult with before going on to take out that patent?

A. I never went on to take out the patent.

X Int. 74. I mean to make preparation to take it out.

A. I consulted with Judge O'Neill.

X Int. 75. Did you know whether Mr. Boyd here was consulted about it?

A. I don't remember whether I consulted Mr. Boyd about it or not; I hardly think I met Mr. Boyd until I came back.

X Int. 76. Didn't Mr. Peper meet him?

A. That I can't say.

X Int. 77. Did you have an interview here with Mr. Boyd on the 11th of May, between Mr. Peper, yourself, and one or two others, at which you endeavored to get Mr. Fisher present?

A. That is after my return from Richmond.

X Int. 78. You had such interview then?

A. Yes, I remember that.

X Int. 79. Did Mr. Fisher come up?

A. Not that I know of.

X Int. 80. Do you know what kind of tobacco Mr. Peper manufactures?

A. He is manufacturing all grades, I think, of plug tobacco.

X Int. 81. How does he make the plugs?

A. I never saw Mr. Peper make any tobacco.

X Int. 82. Have you ever seen any tobacco made there?

A. I have seen tobacco made there; I have never seen the manufactory up stairs.

3396 X Int. 83. How was the plug tobacco marked?

A. It is with a tooth-pick impressed in it.

X Int. 84. Have you seen the tobacco made by Liggett & Myers?

A. Yes, sir.

X Int. 85. How is their tobacco marked?

A. I never saw their marking process.

X Int. 86. I mean what mark does the tobacco have?

A. They have a cross line across the face of the plug, running cross-wise.

X Int. 87. Calling your attention to Exhibit "Boyce Plug," I desire to ask whether that is, or is not, an old plug of tobacco that had the brand stamped into it when it was old and settled?

A. Yes; I had this plug stamped within the last year or so, for the purpose of using as testimony here. Young Christian Peper told me that this tobacco was about a year or two old, and the reason I got it was on that account. I told him "I wanted to use this plug, and any old plug that you have about the factory will do to produce up there, that we can get an impression on."

X Int. 88. Do you know whether Mr. Peper and Messrs. Liggett & Myers are contributing to the defense of this case, of Finzer and others against Foree?

A. Do you mean, do I know that of my own knowledge?

X Int. 89. No; hearsay, from them or any thing of the kind, do you understand that to be a fact?

A. Well, I can't say that I do, because I have had no conversation with those gentlemen in regard to the expense or anything of the kind.

X Int. 90. Haven't you heard that Christian Peper and Liggett & Myers, are contributing to the expense of the defense of this suit?

A. Well, I am not sure on that point. I have an idea that they are, but to say positively I know it I can't do it. My impression is that they are.

X Int. 91. You are on pretty friendly terms with Peper and Liggett & Myers are you not?

A. Undoubtedly; yes, sir.

397 X. Int. 92. Have you ever had any conversation with either of those parties about their assisting you to set up in business again?

A. Not to set up in business again.

X Int. 93. I mean to assist you in business?

A. You mean, are they to set me up in business again?

X Int. 94. No; you are set up in business, but I mean to assist you in a business way?

A. Oh! any time I have ever called on those gentlemen, they have always been very generous with me.

X Int. 95. So you are in a measure under obligations to them?

A. Certainly, certainly, sir.

X Int. 96. Do you know where this Exhibit "Blackberry" Mold came from this morning?

A. Yes, sir.

X Int. 97. Where?

A. From Christian Peper's factory.

X Int. 98. Where did he get it?

A. He got it from the machinery I had, and placed it there in his keeping from my original machinery.

Re-examination by Mr. Boyd:

Int. 25. You say that the sample "Boyce Plug" is old tobacco. Suppose the tobacco had been stamped with this "Blackberry" when it was fresh, how would the character of the device appear as compared with what it does now, as to distinctiveness and clearness?

A. It would be somewhat clearer than now, because the impression would sink deeper into the plug, and make a clearer and deeper impression than this, if the plug was what they call a green plug.

Recross-examination by J. E. Hayne, Esq.:

X Int. 99. If this was what you call a green plug and was pressed in this way, marked in this manner, and you brought it out as an exhibit here, there would be a tendency of the plug to swell, would there not, and in a certain measure obliterate the letters?

A. Not obliterate them, but if I were to take it fresh from the mold without putting it through the finisher, and then lying in the
398 caddy for a month or six weeks, the ordinary time we hold tobacco before offering it for sale, it would swell up, and pass-

ing through the ordinary process the impression that you see on that, even after it came from the molds, and laid in the caddies in that way, would be clearer than now, because the impression would be deeper, sink further into the plug than at present.

X Int. 100. When you are impressing black, juicy tobacco with this mark would there not be a tendency of the juice of the tobacco to come in and fill up those lines somewhat, so that after the tobacco was put in the caddy the plug above it would be united with this and the plugs tear in opening?

A. We never so found it in all our experience. Our impressions were very clear, if anything, clearer than that. We never had that objectionable feature that you speak of in our manufacturing during the time we used it.

X Int. 101. About how many plugs, when of the size of four to the pound, did you ordinarily pack in a caddy?

A. We packed about—do you mean how many plugs in a caddy?

X Int. 102. About how many pounds in a caddy.

A. About twenty pounds; they run from sixteen to twenty pounds.

X Int. 103. As you had one hundred and eighty plugs in one impression, or one turn, you may say, and as there were, as you say, four to the pound and twenty pounds per caddy, which would make about eighty plugs per caddy, you would not have enough marked with the word "Blackberry" to put one in each caddy, would you?

A. Certainly not; we didn't take particular pains to put a plug into each caddy; as I said before, in some caddies would be two plugs, some one, and some there would not be any at all.

X Int. 104. You just packed it in casually as it came?

A. Exactly; I made no point to pack them into any particular caddy.

Signature waived.

N. C. HARRIS being produced and sworn as a witness on the part of the defendant, deposes and says:

399 Direct examination by S. S. BOYD, Esq.:

Int. 1. What is your name, age, residence, and occupation?

A. My name is N. C. Harris; I am in the tobacco business; residence, St. Louis.

Int. 2. Please state whether you were ever a partner of Mr. Fisher's.

A. I was.

Int. 3. What Fisher?

A. C. S. Fisher.

Int. 4. What place, and in what business?

A. I have forgotten the number, on Washington avenue, sir, between Main and Second though.

Int. 5. How long did you continue in business with him?

A. I was there about two years, sir.

(The deposition of this witness is objected to if the witness is called

for the purpose of showing prior knowledge or use, for the reason his name and residence are not produced in the answer in accordance with the statute.)

Int. 6. How did your partnership terminate; did you dispose of your factory, or what?

A. I disposed of the factory.

Int. 7. To whom?

A. Boyce & Brothers.

Int. 8. Do you remember the year you sold to Boyce Brothers?

A. I think we sold, as well as I recollect, in 1868.

Int. 9. Please state if, while you were a partner with Mr. Fisher, any mode was used by him in marking tobacco; and, if so, what that mode was.

A. Yes, we had a mold in which we had one block, on which the word "Blackberry" was on one block in a set.

Int. 10. Please look at the "Exhibit Blackberry Mold" and state how that corresponds with or differs from the mold of which you spoke.

A. That corresponds to it, sir, as far as I know.

Int. 11. To what extent did Mr. Fisher use that mold with the word "Blackberry" on it?

A. Well, we bought the factory, I think, in the beginning
400 from a party named Gaddis, and we had that word put upon this. I think the first year or part of the first year all our business was jobbing, after that time we bought the factory from Gaddis, then commenced manufacturing and had that word put on the block and continued to manufacture it until we sold out to Boyce Brothers at which time I went in with James S. Price and turned over all the machinery. There was no special contract in regard to the sale of this particular item, but the machinery in general was sold to Boyce & Brothers.

Int. 12. What was done with the tobacco manufactured by yourself that had on it the word "Blackberry"?

A. It was sold to the trade in general.

Int. 13. Can you give any idea how much tobacco was made in these molds?

A. They were used constantly, sir, but how much was turned out, my recollection don't serve me at this moment, they were used constantly, though, in the business.

Int. 14. Look at the sample defendants' Exhibit "Boyce Plug" and state how that compares with or differs from tobacco turned out by you at the time you mention as far as marking is concerned?

A. I think that represents it, sir; about as I recollect it.

Cross-examination by J. E. Hatch, Esq:

X Int. 1. What part of the business did you attend to while in the partnership with Mr. Fisher?

A. I attended to anything that came up. I did most of the selling though.

X Int. 2. You were on the road considerably?

A. No; not on the road much, sir. Sold it mostly here, though I traveled several times up as far as Omaha.

X Int. 3. Mr. Fisher had special charge of the manufacturing, did he not?

A. Well, I don't know, sir. No; I can't say he had any more to do with it when I was at home than I had, but I sold the Second street trade. I knew them better, more familiar with them, and sold to them usually.

X Int. 4. Who made the arrangements for putting the
401 stamp on to one of the blocks of the mold in your place of business, you, or Mr. Fisher?

A. I don't recollect; it might have been a suggestion of Mr. Fisher. Of course the concern bore the expense of it, and it might have been original with him, but at this moment I can't recollect whether it had occurred to both of us, or whether only to me; at any rate, the concern, of course, bore the expense of getting up the device.

X Int. 5. Did you pack these plugs in with the rest of the tobacco in the ordinary method?

A. Yes; our object was, as well as I recollect—I had seen a piece of Holbrook's navy. I traveled to Indianapolis once or twice. My idea was to make a fine piece of goods and to mark it, and I think that was the way the idea originated. I went over there and found he had such a run on his goods at that time in Indianapolis and La Fayette, and my idea was to make a fine piece of goods and make an impression on it.

X Int. 6. Did you see the tobacco as it came up from the press?

A. I did; yes, sir.

X Int. 7. Afterwards, after it had been packed in a caddy, did you see it?

A. Yes; I frequently examined it. I examined it in order to see how the impression remained on the plug.

X Int. 8. Was the matter at that time satisfactory to you and to Mr. Fisher?

A. Well, we were there so short a time we really hadn't tested the thing sufficiently to satisfy myself, because at that juncture I thought it was to my interest to go with Mr. Price, and hence this property, this frame, &c., was turned over to Mr. Boyce.

X Int. 9. You did nothing further with it, after you turned it over?

A. No, sir.

X Int. 10. You didn't consider the matter amounted to anything of importance at that time, did you?

A. Well, I thought it was a good idea; the idea had struck me, of course.

X Int. 11. When you sold out, did you consider at the time
402 you sold out that the matter was anything of importance?

A. Well, there was no specification in the bill of sale in regard to this particular set of molds—just a general sale of machinery.

X Int. 12. You didn't, then, regard it as anything of special importance at that time?

A. Well, at that particular time, I, of course, didn't know whether it would, it might, do in the future time, whether I would continue to do this or not; hence I didn't include it in the sale to Boyce; that is, he bought the machinery and everything as it stood; but as far as my recollection goes there was no bill of sale except for the factory as it stood, and no specification of this particular mark or anything of the kind.

X Int. 13. But at that time when you sold to Mr. Boyce you didn't regard what you had done as of any particular importance, did you?

A. No; I didn't think it was finished then; I thought we hadn't completed the idea for which we were striving.

(Signature waived.)

GEORGE S. SHRYOCK, being produced, sworn, and examined as a witness on the part of the defendants, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. What is your name, age, residence, and occupation?

A. My name is George S. Shryock; residence, St. Louis; occupation, secretary and treasurer of the Home Bitters Medicine Manufacturing Co.

Int. 2. Are you acquainted with the firm of Boyce Brothers?

A. Yes, sir.

Int. 3. Please look at the sample Defendants' Exhibit "Boyce Plug," and state when, if ever, you saw tobacco with that brand on it prior to seeing this sample.

(The deposition of this witness is objected to if the witness is called for the purpose of showing prior knowledge or use, for the reason that his name and residence are not set up in the answer, as required by statute.)

403 A. It was in the spring of 1873, I think in the month of April.

Int. 4. Where did you see it, and under what circumstances?

A. Mr. Boyce was endeavoring to sell some to Shryock & Rowland; it was in their house.

Int. 5. You were a partner at that time of Shryock & Rowland?

A. No, sir; I was manufacturing tobacco, but I was making special brands of tobacco, and having ceased to make such goods as they sold, Mr. Boyce was there to sell to my brother's house; before that time he would not offer to sell it to them, because they got their tobacco from me, but I quit making this tobacco then.

Int. 6. When, after that, did you see any more of that tobacco, if at all?

A. I saw it once, I think, under glass in a box at Boyce's factory, a sample box. I think, when I sold out my tobacco business I sold Mr. Boyce some machinery, and I had occasion to be in his house, and I saw this tobacco then.

Int. 7. Did you ever see it during the course of manufacture?

A. No, sir.

Cross-examination by J. E. Hatch, Esq.:

X Int. 1. Is the firm of Shryock & Rowland engaged in the manufacture of tobacco now?

A. They have never been; they are wholesale grocers, and I had supplied them with tobacco, as I was a tobacco manufacturer when I made the kind they used, but at this time I had quit making everything except special brands put up in a peculiar shape, what is called "Jubilee Twist" are that sort of thing. I was confining myself to that line, and then of course the market they offered to other manufacturers was open to other people.

X Int. 2. Did you see any more than one plug at that time that you mention?

A. Yes; he had two or three in his hand, samples of tobacco.

X Int. 3. You didn't understand that he was selling tobacco so marked, did you?

A. Yes, sir; I understood that was his brand; I talked to him about that peculiarity, for my foreman had informed me that he was making it some six months before, but I had never seen it before; we had a conversation about this peculiar mark.

404 X Int. 4. Did you understand this tobacco he offered to sell to that firm was a brand of tobacco in which the caddies contained only tobacco so marked?

A. Yes; the tobacco he was offering then was all marked like that. I understood him that was a sample. He stated this was a sample he was offering them.

X Int. 5. Did they purchase of him?

A. I don't know that they did at this time, but I know shortly after that they bought one hundred caddies of him.

X Int. 6. Do you know whether or not that one hundred caddies they bought of him afterwards was marked in that manner?

A. No, sir; I don't know that, had no occasion to know.

(Signature waived.)

George S. Myers, being produced and sworn as a witness on the part of defendants, deposes and says:

Direct examination by S. S. Boyd, Esq.:

Int. 1. What is your name, age, residence, and occupation?

A. My name is George S. Myers; I reside in St. Louis; occupation, tobacco manufacturer.

Int. 2. Are you acquainted with Christian Worley?

A. Yes, sir.

Int. 3. And Boyce & Brother?

A. Yes, sir.

Int. 4. Please state whether you ever had any conversation with Christian Worley, in relation to marking of tobacco with an impression?

(The deposition of this witness is objected to as his name, resi-

dence, &c.; and the matter inquired of is not pleaded in the answer as required by the statute.)

A. Well, I don't know as I had any particular conversation about marking with an impression, there was something said about it in a conversation Worley and I had, in regard to the finishing of tobacco under the new process.

405 Int. 5. What was that conversation?

A. I think it was in August, 1876, that my partner, Mr. Liggett, had been up to the tobacco warehouse, and he saw some work Worley had finished, some sample plugs up there which looked right nice and smooth, and he came down and told me, I was then living in Alton, and he told me——

The conversation is objected to by counsel if it is simply a conversation between himself and partner.

WITNESS: No, sir; it is not. I was telling how this conversation occurred. In going home—I was living in Alton in 1876, I moved here October 14, 1876, this was in the latter part of August—I stopped at Worley's in going home to Alton. I went on the way to take the Chicago & Alton railroad, and stopped in to see Mr. Worley in regard to this new finishing process. I went in the office and found him there, and he took me in the press-room and showed me the manner of pressing, &c. He called one of the pressmen, who opened a box and showed it to me. It was nice, hard, and firm, and he went on to state the good qualities of it. He said it was perfectly firm and solid, like a block of wood, finished, which I saw. Then he remarked that he could press his name, trade-mark, or anything in it, and after he put it under his press it would stay firmly and not come out. Then he remarked that green tobacco would not hold that impression. It would swell out; that Boyce & Brothers tried it with green tobacco and it would not stay in, but under his process it would stay in.

Int. 6. Do you know whether or not, at that time, they had applied for a patent under that process?

A. I do not. He didn't say anything about a patent. He spoke of it, not as an invention, but as something that could be patented, but didn't say anything about applying for a patent at all.

Cross-examination by J. E. HAYCH, Esq.:

X Int. 1. What is your present firm?

A. Liggett & Myers Co. It was at that time Liggett & Myers.

X Int. 2. You are manufacturers?

A. We are manufacturers.

X Int. 3. To quite a large extent.

406 A. Yes; we manufacture considerably, sir.

X Int. 4. How do you mark your tobacco?

A. In various ways, some with a strip and some with a line right across it and a star in the centre.

X Int. 5. How do you put on that line and star in your tobacco?

A. We put the star on in the mold, and then mold and press in the tin star, and it is left on, and remains in there.

X Int. 6. How do you put on the lining?

A. We put on the lining with wire soldered on to the tin.

X Int. 7. Where do you do that?

A. In the finisher.

X Int. 8. That is, you press the tobacco first in a hydraulic press?

A. Yes, sir.

X Int. 9. Then, when it is being pressed in the finisher, afterwards you press it between the plates?

A. Yes, sir.

X Int. 10. Tins?

A. Yes, sir.

X Int. 11. With whatever is underneath your wires to make a line?

A. Either; we put ours on top. It is the same thing though, and with a great deal of our tobacco, plug and common tobacco, we don't put anything, except a round tin tag on it.

X Int. 12. Why do you put that mark of the wire on in the finisher, instead of putting it on in the mold?

A. Well, just because it saves us the trouble of putting it on the mold, it is easier to put it on the finisher, less expense putting it on the finisher.

X Int. 13. Don't you think it endures better?

A. No; I think it answers just as well in the mold, but it is more expensive to put on, costs more money.

X Int. 14. Why does it cost more money to put on the mold?

A. Because it costs more to solder on the blocks of the mold than to put on the finisher, because one is tin and the other iron.

X Int. 15. In your business of manufacturing the amount you do, how much difference in the expense do you think it would make?

407 A. Well, I have never made any inquiries.

X Int. 16. A considerable expense?

A. It would amount to something, yes; perhaps several hundred dollars, maybe not over one hundred dollars. Perhaps one hundred dollars would finish it; yet I don't know; I speak at random.

X Int. 17. When did you begin to mark your tobacco with a line impressed in it by a wire on a tin in the finisher?

A. Some time last year.

X Int. 18. About how much do you make that way each month?

A. I don't know; I don't keep account of it.

X Int. 19. How much per day, as near as you can estimate?

A. I don't know how much; some days I don't make any, other days would make a good deal of it.

X Int. 20. You do a pretty lively business?

A. We do a pretty lively business; no mistake about that.

X Int. 21. Have you ever been threatened with a suit under the patent sued on in this case, that is, the Miller & Worley patent?

A. Yes, sir; we have.

X Int. 22. You have been anticipating a controversy on it?

A. No; never thought it ground for controversy; never anticipated any; we think it mere bombast. That is our opinion.

X Int. 23. Are you contributing to the defense of this case, your firm?

A. I don't know whether we are or not; the probability is it will be defended by all interested, and our proportion will be paid.

X Int. 24. Who besides yourself have been taking an active part in the defense?

A. Mr. Foree has been an active man.

X Int. 25. He is a party to the suit?

A. He is a party to the suit, and the most active man I have come across lately.

X Int. 26. Who else is taking part in this defense?

A. I don't know of anybody, except Mr. Peper had the molds in his possession.

X Int. 27. Mr. Peper is also helping in the matter financially, is he not?

A. I don't know whether he is or not; I don't think there
408 is any contract or understanding about it. The probabiltiy is, Mr. Peper will do it. I don't think there is any contract at all.

X Int. 28. Your firm expect to, do you not?

A. We do expect, undoubtedly, sir; we want one suit to decide the thing. If they have the right to it, we want them to have it; if not, we want it common property.

X Int. 29. Do you know of any attempt being made to get a patent on the word "Blackberry," and the cutting or impressing it in tobacco by Mr. Boyce?

A. Well, I don't know that I personally knew anything about it. I have heard of it. I had no personal interest in it.

X Int. 30. Do you know such a thing was talked about?

A. It was talked about; I heard it talked about; yes.

X Int. 31. It didn't succeed, because Mr. Fisher would not sign the papers?

A. I have heard that; I don't know anything about it; I never spoke to Mr. Fisher about it in my life.

X Int. 32. Didn't some of the members of your firm, either you or your partner, and Mr. Peper and Mr. Boyce have some conversation up here in this office about this matter at one time along in May?

A. Not to my knowledge; there might have been, sir, but I don't think I heard anything about it; only I heard Mr. Boyce was consulted; I don't know whether he was or not.

X Int. 33. You heard, didn't you, that they had prepared an application, and presented it to Mr. Fisher for his signature?

A. Well, I had heard that; it was all hearsay; I don't know of my own personal knowledge.

X Int. 34. And that Mr. Fisher declined to sign it?

A. I heard that Mr. Fisher declined to sign it; yes, sir.

X Int. 35. What month did you say that conversation took place in between you and Mr. Worley?

A. The latter part of August or the first of September. I moved down here in October, and it was about six weeks or two months before I moved down.

X Int. 36. In 1876?

A. Yes, sir.

409 X Int. 37. That conversation was where?

A. At Miller & Worley's factory.

X Int. 38. Did you ever make a proposition to take an interest in that patent?

A. What patent?

X Int. 39. Miller & Worley's patent here sued on.

A. I don't know whether I ever did or not. I don't remember; I told him this, that I proposed, rather than to have a lawsuit on any claim, I would rather pay a consideration and get a shop right; I proposed to take a shop right, and I told him rather than have a lawsuit I would rather pay a certain amount.

X Int. 40. Who did you have that conversation with?

A. I think with Miller & Worley and Finzer; I think I spoke of it several times.

X Int. 41. What did you offer to pay?

A. I don't know as I made any offer.

X Int. 42. What did they ask?

A. They declined to make the proposition.

X Int. 43. Now, isn't this about the state of it: That some conversation took place between one member of your firm and Miller & Worley in the first place, and that you thought their figures rather high, and that you then afterwards, after Finzer and Brothers had bought an interest in the patent, and after taking hold with Miller & Worley to help to enforce it, did you not then ask to be admitted, and come in and take an interest in the patent yourself?

A. I don't remember of knowing anything about the patent until Miller & Worley and Finzer & Brother held it jointly. The first I remember hearing about it was they owned it jointly.

X Int. 44. Do you know whether any one was present at the time of the conversation referred to, except yourself and Mr. Worley?

A. There was a pressman that opened the box that Mr. Worley called, that opened the finisher and took the samples out, and he also unpacked the lumps and put them in a box. Mr. Worley and I were present with him part of the time, and part of the time we were alone.

X Int. 45. Do you remember hearing his name?

410 A. No, I did not; I don't know as I ever saw him or paid any attention to him at all. He was a hand in the factory; Mr. Worley called him.

X Int. 46. Didn't your firm ask Mr. Finzer to come over here to St. Louis and consult with you about selling a right in this patent during the year 1877?

A. I don't remember; I knew we felt this way; we were perfectly willing to pay anybody that owned the right on anything, or claimed the right, we were willing to pay a bonus rather than have trouble about it; to settle the matter up without trouble at all; we were willing to pay a bonus in fact; Mr. Liggett, my partner, said he told Mr. Fizer—I was absent in New York at the time—he would pay the same price Mr. Dausman and Arhens was paying.

X Int. 47. Do you remember how much that was?

A. No, I do not; I never found out; that is, I did not; my partner thought they were not acting square about it some way; I don't know how the thing was arranged.

X Int. 48. Mr. Finzer came here about the matter?

A. I suppose about the matter; he was here; came to see us the evening I left, and I referred him to Mr. Liggett.

X Int. 49. Do you regard the right to mark plugs this way, in the manner in which the patent describes, as a valuable thing?

A. Well, to us it is not, sir.

X Int. 50. Still you continue to use it?

A. We continue to use it, yes, because we have introduced some tobacco that way; I don't know how long we shall use it, though; I don't consider it of any great value in our business; we only use the line.

X Int. 51. It would be no injury to your business to stop using it, I suppose?

A. It might injure us for the time being, sir; perhaps would, but I don't think it would be any permanent injury.

X Int. 52. That negotiation at the time Mr. Finzer was here continued for two or three days, did it not?

A. I only know by hearsay; I was in Cincinnati, and then went to New York, and was not present only the evening he came; I met him on the street, not at the factory; I met him when I was
111 going to the depot, and he was going to the factory.

X Int. 53. The negotiation was conducted with your partner?

A. The negotiation was conducted entirely with him.

X Int. 54. Didn't your partner telegraph to you at great length in regard to the matter the second day of the consultation while you were at Cincinnati?

A. He telegraphed me a great many times, sir; a great deal of it.

X Int. 55. Are you sure as to the length of time that intervened between the conversation you say you had with Mr. Worley and the time you came down here?

A. I cannot specify the date, sir.

(Signature waived.)

ADREON DE JONG, being produced and sworn as a witness on the part of the defendants, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. What is your name, age, residence and occupation?

A. My name is Adreon De Jong; residence, St. Louis; occupation, tobacconist.

Int. 2. Are you acquainted with the firm of Boyce Brothers?

A. Yes, sir.

Int. 3. Please state whether you ever saw any tobacco manufactured by them which was peculiar in its appearance as to marking and what such peculiarity consisted in?

A. I have seen tobacco made by them that had the word "Blackberry" impressed in the plug.

Int. 4. Please look at Exhibit "Boyce Plug" and state how that corresponds with or differs from tobacco of which you have spoken, as far as the marking is concerned?

A. As far as the marking is concerned to the best of my recollection it is about the same thing; the tobacco is different; it was a darker tobacco; the same shaped piece.

Int. 5. Please state when you first saw tobacco so marked?

A. I can't fix it exactly; not a great while after Boyce & Brothers bought out Fisher & Harris.

Int. 6. Where did you see this tobacco?

412 A. I saw it at Jackson, Pfouts & Douglas', in their office.

Int. 7. What are they?

A. They were wholesale grocers.

Int. 8. For what purpose was it there?

A. As a sample.

Int. 9. Please state whether you saw this kind of tobacco more than once on the market?

A. I saw it in several places; it was my business to be up and down the street, Second street, among the wholesale houses to sell that tobacco, and I saw samples of pretty near every tobacco on the market, and among the rest I saw this sample.

Int. 10. How often did you see these samples?

A. Oh! I saw them several times, and in several places; saw it in Norris, Taylor & Co.'s

Cross-examination declined.

I, L. L. Walbridge, special examiner, certify that the foregoing witnesses came before me at the office of Samuel S. Boyd, Esq., 506 Olive St., in the city of St. Louis, Mo., and were by me sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and that their examinations reduced to writing in short-hand by me.

I further certify that it was then and their agreed in my presence by counsel for complainants, John E. Hatch, Esq., and Samuel S. Boyd, Esq., counsel for defendants, that my transcript of said short-hand notes so taken might be read in evidence at the trial of said cause, with the same force and effect as if said transcript had been signed by said defendants in my presence.

I further certify that the foregoing is a true and faithful transcript of said short-hand notes so taken.

L. L. WALBRIDGE,
Special Examiner.

(It is stipulated and agreed by the parties to the above-entitled cause that an order may be entered *nunc pro tunc*, appointing L. L. Walbridge, special examiner, to take testimony in the above-entitled cause.)

L. L. WALBRIDGE,
Special Examiner

113 ANTON MILLER *et al.*, Complainants,
vs.
SAMUEL J. FOREE *et al.*, Defendants. } In Equity.

Testimony taken in behalf of the defendants, (under 67th rule in equity as amended,) at Richmond, Virginia, 18th December, 1878.

Stipulation.

It is hereby stipulated that an order may be entered as of this day appointing J. J. Lafferty, special examiner, to take testimony in the above cause.

Present: John E. Hatch, counsel for complainants, and S. S. Boyd, Esq., counsel for defendants.

J. P. WILLIAMSON, being produced, sworn, and examined as a witness on the part of the defendants, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. State your name, residence, age and occupation.

A. J. P. Williamson: Petersburg, Va.; 51; tobacconist.

Int. 2. How long engaged in the manufacture of tobacco?

A. Twenty years or more.

Int. 3. Please look at the sample now shown you, marked Exhibit "Williamson;" state what it is.

A. I will state that this plug (holding the exhibit in his hand) of tobacco I call "Cable Coil," as manufactured at my factory in Petersburg.

Int. 4. State when you first began to manufacture tobacco like exhibit.

A. I will state that an imitation of that plug or the brand and style of tobacco was first made in the year 1866, by James M. Venable, of Petersburg, Va. After his death in a few years, I don't recollect the time of coming into possession of this brand or style with the privilege of making it. I have been making it from that time until some time during the past year.

114 Int. 5. What was done with the tobacco made by you in this style?

A. Large quantity of it was shipped to and sold by Sprague, Warner & Co., of Chicago, though considerable quantity was sold in the Petersburg market, and most all of other markets of the United States.

Int. 6. As near as you can fix it, state when you commenced manufacturing this style of tobacco.

A. I think it was the latter part of 1867, or early in 1868.

Int. 7. Now, please describe exactly the process in manufacturing tobacco of that style.

A. It is made by first making a round plug, then it is put in a sheet mill, (we had no mold at that time,) in the round state and prized flat, then turned on the edge and made into a square or rather a flat square by pressing it again; then it was wrapped with a tin foil, then with a cloth; then with a cord; then it was put in a tin-

ishing pot or mill, a square iron box twelve inches square. The plugs were laid close together and under a heavy pressure of the screw pot; then it was taken out, cord taken off, cloth also, leaving the plug as you see it now. Sometimes the foil was stripped from it and it was packed in boxes and shipped in that condition, otherwise it was shipped with the foil upon it.

Int. 8. What was the reason of the foil?

A. I think there were two reasons of the inventor, Mr. Venable, one was to keep the tobacco moist, another, for show.

Int. 9. Describe more particularly how this tobacco was put in the finishing pot.

A. Well, sir; when it was put in the finishing pot, we just put this, flat square; they were placed along side, edge to edge, with the cord on, then tin, then flat iron, (say sheet iron about one-eighth of an inch thick,) then another layer, same way, and so on till pot was filled.

Int. 10. Then when filled what was done?

A. Pressure immediately put upon it.

Int. 11. When taken from the finishing pot, what was done with the tobacco?

A. The cord was immediately unrolled, then the cloth, then
415 it was put in boxes, headed, nailed up for market.

Int. 12. What was your object in putting this mark upon the plug?

A. It was to distinguish it from any other plug of tobacco, and make an impression upon it something different from what we had ever seen.

Cross-examination by Mr. J. E. Hatch:

X Int. 1. When was the sample Exhibit "Williamson" made?

A. Made yesterday.

X Int. 2. How was it pressed?

A. Pressed in the way I described before, flat first.

X Int. 3. How was it flattened?

A. By pressure upon a round roll.

X Int. 4. By the same machinery described by you?

A. Flattened in the same way, but not in the same mill. I am not manufacturing tobacco. The plugs were made at my request exactly as we used to make them.

X Int. 5. When did you quit manufacturing tobacco of this kind?

A. I cannot say I have quit. I make it when I get an order for that particular kind.

X Int. 6. Who are the principal customers to whom you sold tobacco of this kind?

A. My principal customers when I was running my factory on this tobacco were Sprague, Warner & Co., of Chicago. I sold a good deal in our own city, I could name parties if necessary.

X Int. 7. Did you sell to dealers outside the city, except to the Chicago firm?

A. Yes, sir; I had some of it sold in Baltimore.

X Int. 8. To whom, and to what extent?

A. I could not tell without reference to my books. Lewis Warrington was my agent at the time.

X Int. 9. During what years did you manufacture this brand?

A. I commenced it about the first of 1868 and manufactured it from that time until about 1872, and in a quite a large way for a small manufacturer. It was one of my styles of brands for some
416 three or four years. Since 1872 I have been almost out of the manufacturing business, because I have another branch of business.

X Int. 10. About as near as you can tell, how much per year did you make in this way?

A. I suppose I made several hundred half boxes for one house alone. I will here state that I put this plug up in six-inch lengths. This (the exhibit) is twelve inch, and is the main style.

X Int. 11. Did you make other styles at the same time?

A. Yes, sir.

X Int. 12. At what price did you sell this as compared with the others?

A. I got a better price for that than any other tobacco I made at that time (considering the cost of stock) on account of its novelty.

X Int. 13. About how much better?

A. Ten to fifteen per cent. I will say five to ten cents a pound according to quantity sold. It was sold in small quantities, because of its showiness and novelty.

X Int. 14. How was the cloth put on, after the foil was applied; how was the cord added over that; was it done entirely by hand or otherwise?

A. The foil, cloth, and cord all put on by hand.

X Int. 15. How long would it require a hand to apply the cloth and the cord?

A. They did it dextrously after they got in the habit of it; I couldn't say how many seconds or minutes.

X Int. 16. How long did it take a hand to apply cloth and cord for an ordinary finisher?

A. Generally took a very short time for a caddy or box either. You will observe it is a very heavy — and takes very little time to fill boxes with it—got through with it quicker than I supposed. Foil put on by one hand, passed by, and another put on the cloths, the third put on cord, the fourth put it into the finisher.

X Int. 17. State as near as you can estimate the time it required for these three hands to wrap one hundred pounds?

A. I suppose they could do it in fifteen minutes after they became expert at it.

417 X Int. 18. In taking it out of the finisher and unwrapping, how done; how many persons did it?

A. Only took one person to each plug. Put, frequently, half-dozen in breaking up a finisher. It was done quickly—just slip the cord from end, giving it a sudden jerk, extricate at once, then pack in the boxes.

X Int. 19. Was this process used by others except yourself?

A. No other except Mr. Venable, who first originated the design.

X Int. 20. Never was patented, was it?

A. No, sir; we hadn't thought much about patents then.

X Int. 21. Has this tobacco marked in this manner been sold to any extent since 1872?

A. I think not, sir; for the simple reason there has been since that time a great many "navy" tobaccos put upon the market, and caused me to sell less. I didn't have sufficient capital to push my business. This is a "navy" tobacco.

Re-direct examination by Mr. BOYD:

Int. 14. What was the purpose of the cloth wrapper?

A. To keep from cutting the foil and the tobacco wrapper.

C. W. SPICER, being duly sworn, deposed:

Examination by Mr. BOYD:

Int. 1. State your age, residence, occupation?

A. Tobacco manufacturer; Petersburg, Va.; forty-seven.

The counsel for plaintiffs here objected to the deposition of this witness, if taken for the purpose of proving prior knowledge or use, for the reason that name and residence are not set up in the answer of defendants, as required by statute.

Int. 2. How long engaged in the tobacco business?

A. Twenty years.

Int. 3. Please look at exhibit marked "Williamson," and state as near as you can when you first saw tobacco like this exhibit?

418 A. I saw it early in 1866. It was first put up by Mr. Venable, of Petersburg, Va.

Int. 4. Afterwards?

A. By Mr. J. P. Williamson.

Int. 5. How late a date did Mr. Williamson continue the manufacture of it?

A. I saw it frequently up to 1872.

Int. 6. Where did you see it?

A. I saw it in the factory and in the stores of Petersburg. I have seen it at H. A. Richey & Co.'s, New York.

C. A. JACKSON, being duly sworn, deposes as follows:

Examination by Mr. BOYD:

Int. 1. State your age, residence, and occupation.

A. Thirty-three; tobacconist; Petersburg, Va.

The counsel for the plaintiffs entered the same objection as to Spicer's deposition.

Int. 2. Please look at Exhibit "Williamson," and state as near as you can when you first saw it.

A. About 1866.

Int. 3. Where?

A. In a man's saloon by the name of Schaeffer, in Petersburg, Va.

Int. 4. Do you know by whom manufactured?
A. No, sir.
Int. 5. When have you seen it since?
A. Never seen it since until we made some by the direction of Mr. Williamson, last year, for samples.
Int. 6. How long engaged in the tobacco business?
A. Ten years.

R. A. MILLS, being duly sworn, deposes as follows:

Examination by Mr. BOYD:

Int. 1. State residence, age, occupation.
419 A. Richmond, Va.; fifty-four; tobacco-leaf dealer.
Int. 2. Please state when you first saw tobacco marked with an impression.
A. Saw sample exhibited here in the Tobacco Exchange by Tuckett, of Tuckett & Billings, in the winter of 1870 or spring of 1871. My impression is, it was in December, 1870, or in February, 1871.
Int. 3. What was the character of that mark?
A. The letters T and B stamped upon the tobacco, and used gold dust; they looked like two gold letters T and B.
Int. 4. What do you mean by Tobacco Exchange?
A. Room in Richmond where we sell tobacco.

Cross-examination by Mr. HATCH:

X Int. 1. Where were Tuckett & Billings' firm?
A. Hamilton, Canada.
X Int. 2. Their works at Hamilton, Canada?
A. Yes, sir.

J. B. PACE, being duly sworn, deposed as follows, viz.:

Examination by Mr. BOYD:

Int. 1. State your age, occupation, and residence.
A. Forty-one; tobacconist; Richmond, Va.
Int. 2. When did you first see tobacco marked with an impression?
A. In 1870 or 1871.
Int. 3. Where, and what was the character of the impression?
A. In the Tobacco Exchange, Richmond, Va. The impression was made in the face of the lump by a die, I presume, with bronze.
Int. 4. What the characters impressed?
A. T and B.

Cross-examination by Mr. HATCH:

X Int. 1. You didn't see the tobacco marked?
420 A. No, sir.
X Int. 2. Do you know what the methods of marking adopted were?
A. I never saw it done.

X Int. 3. Was this the same instance referred to by former witness, when the price of tobacco was shown by Mr. Tuckett?

A. I presume it was. It was exhibited by him, and Mr. Mills was present.

Defendants offer in evidence letters patent granted to Anton Miller on the fifth of December, 1877, No. 185,119.

Objected to by counsel for plaintiffs as immaterial and irrelevant.

Defendants' counsel offer in evidence certified copy of English letters patent, granted John Gerard, March seventeenth, 1854, No. 635. Form of machinery for cutting and stamping soap.

Objected to by counsel for plaintiffs.

Defendants' counsel requests plaintiffs' counsel to give reasons for his objection.

The counsel for plaintiffs adds, for the reason that the same is not pleaded, and the answer is irrelevant and immeterial to the issues in the case.

Defendants' counsel gives notice that as soon as a hearing can be had at the January rules in the United States circuit court, district of Kentucky, at Louisville, a motion will be made for leave to amend answer filed herein by setting up English patent.

Counsel for plaintiffs adds, that if counsel for defendants prepare his amendment setting up patent referred to, plaintiffs' counsel will stipulate that the same may be filed without application therefor.

Defendants' counsel offers in evidence a certificate from the Department of Agriculture of Canada. Certificate of the registration of a trade-mark on plug tobacco, to George Elias Tuckett and John Billings, on the twentieth February, 1872.

Objected to by counsel for plaintiffs.

421 Testimony taken on the part of the defendants under the 67th rule of practice, as amended for the courts of equity of the United States, by L. L. Walbridge, special examiner, duly appointed by said court to take depositions in said cause, on Friday, January 3, 1879, at the office of Samuel S. Boyd, Esq., No. 506 Olive street, St. Louis.

Present: John E. Hatch, Esq., counsel for complainants; Samuel S. Boyd, Esq., counsel for defendants.

N. C. Harris, of lawful age, being recalled and examined as a witness on behalf of the defendants, deposes and says:

Direct examination by S. S. Boyd, Esq.:

Int. 1. Please state if you are acquainted with Anton Miller and Christian Worley.

A. Yes, sir.

Int. 2. How long have you known them?

A. I have known them, I suppose, ten years.

Int. 3. While you were a partner with Fisher, please state whether either of those men were in your factory?

A. Yes, sir; while we were together Mr. Miller used to come around to our place.

Counsel for complainants objected to the foregoing question as not pleaded.

Int. 4. How frequently?

A. Well, I don't remember positively, but every few days; sometimes every day. We were quite intimate together at that time. We were located near each other.

Int. 5. Please state whether he ever saw tobacco manufactured by you there?

A. Yes, sir; I have shown him tobacco that we were making at that time.

Int. 6. State whether or not he ever saw any of this tobacco of which you have already spoken as being marked with the word "Blackberry"?

A. Yes, sir; I have showed him that.

422 Int. 7. In what condition was the tobacco?

A. Well, with the "Blackberry" stamp upon it.

Int. 8. Do you know whether he ever saw it during the process of being stamped?

A. No, sir; I don't recollect distinctly about that. I think I showed it to him after we had the plug finished; and he, on several occasions, seemed to think that the impression would not last, and we knocked open some packages and showed it to him, after they had been standing for some time in the boxes.

Int. 9. In what condition were those you knocked open and showed to him?

A. They were perfect; that is, they represented what we were making at the time—same as was represented in the factory.

Int. 10. Do you know whether he knew how that impression was made upon the plug?

A. Well, I don't remember whether he ever saw how the letters were put upon the blocks of the mold or not; but, of course, he knew how we were doing it; and I presume we told him at the time how we were doing it, and he ridiculed the idea; didn't seem to lay much stress on the process, and that is the only reason I recollect it.

Int. 11. At that time where was Miller engaged in business?

A. I think he was traveling, or book-keeper, in some capacity for Christian Peper, who was just around the corner from us then, about a square possibly from us—say a square and a half; and I think in passing up to his dinner he used to stop frequently in that way.

The deposition of this witness is objected to, for the reason that the name and residence of the witness are not pleaded in the answer as required by the statute, and for the further reason that the witness is recalled without the order of the court.

Cross-examination by JOHN E. HATCH, Esq.:

X Int. 1. Who has talked with you about this matter since your former examination in this case?

A. Well, I think after I was here last, sir, I mentioned the fact to Mr. Foree, and asked him the question, why he didn't ask me

423 whether Miller or any of the parties had ever seen this thing when we were making it, and he told me he wished he had known it, and he would have called on me to have stated that fact at that time.

X Int. 2. Was that before you went away from the office here?

A. No, sir.

X Int. 3. Where was it?

A. Well, I don't remember whether it was in our office or on the street where I met him, and asked him why he hadn't asked me some other questions.

X Int. 4. How were you interested in having these particular questions put to you at that time?

A. Well I am not interested a particle, sir; simply that all the facts should be brought out in the case.

X Int. 5. You were at entire liberty to have brought them out yourself at the time you gave your former testimony, were you not?

A. I would have, but was not asked, and didn't think it proper to advance them myself.

X Int. 6. Where are you now working?

A. I am with Boyd.

X Int. 7. With what Boyd?

A. Well, it is J. W. Boyd.

X Int. 8. What is the business of the firm?

A. Tobacco.

X Int. 9. How long have you been engaged with him?

A. Well, about nearly a year, sir.

X Int. 10. Are you putting up tobacco?

A. Yes, sir.

X Int. 11. What kind of tobacco do you put up?

A. All kinds.

X Int. 12. How is the tobacco marked that you are now selling?

A. Well, I can't describe it very accurately, sir; without having a plug to show. It is triangular shaped, but I don't remember how. I can't describe it very acturately unless I see the plug. It is a triangle, anyhow?

A. Very small; I presume about an inch or three-quarters.

424 X Int. 14. Anything inside the triangle?

A. No, sir.

X Int. 15. The triangle is used rather as a trade-mark, is it?

A. Yes, sir.

X Int. 16. What is the brand called?

A. Well, we have several brands, sir.

X Int. 17. Do you put the triangle on all the different brands?

A. No; we mark them differently. Different grades have different impressions.

X Int. 18. What other impression do you put on besides the triangle?

A. Well, I can't describe it to save my life. It is something I never saw before; it is egg-shaped. Mr. Boyd had it when I went there. What it represents I have no idea. It never struck my fancy. It was something he got up.

X Int. 19. It is an egg-shaped mark.

A. Yes, something like that.

X Int. 20. How are these marks impressed in the tobacco?

A. They are pressed in with a plate.

X Int. 21. The mark being on the plate?

A. Yes, sir.

X Int. 22. Is the work done in the finisher?

A. No, sir.

X Int. 23. Where is it done?

A. It is done in the mold.

X Int. 24. That is, in the mold where the tobacco is first pressed into plug?

A. Yes, sir.

X Int. 25. The markers being placed upon the followers?

A. No, sir; it is an iron plate placed — this.

X Int. 26. That is, the tobacco is placed in the frame in the cells?

A. Yes, sir.

X Int. 27. Then these plates with the marks upon them——

A. Are at the bottom of the cells.

X Int. 28. And these followers come under the plates, is that it?

125 A. Well, I don't know what you mean by followers?

X Int. 29. The blocks.

A. Yes, sir.

X Int. 30. How large a house is that? How much tobacco do they sell that is marked with an impression?

A. That I can't tell you, sir.

X Int. 31. How does it compare with other St. Louis houses; is it a large or a small house?

A. It is not as large as some others here, and a good deal larger than some others.

X Int. 32. Do they mark any of their poorer brands in this way that you have described so definitely?

A. They have a cheap brand that is marked; yes, sir.

X Int. 33. Did I understand you to swear in your direct-examination that Mr. Miller saw the process, by which you say the "Blackberry" was stamped into the tobacco, when you were in business with Fisher, and that you know of your own knowledge that Miller did see that process used?

A. I don't think I said that, sir. I think I stated that he saw the plug. I don't think I stated that he saw the actual process?

X Int. 34. Where was your factory at which you say that you showed Mr. Anton Miller the tobacco marked with the word "Blackberry"?

A. Situated on Washington avenue, between Main and Second streets. I don't remember the number, sir.

X Int. 35. Where was the factory of Mr. Peper at which you say Mr. Miller was working at that time?

A. Peper was on Morgan and Green, I think, sir; on the East side. I think those are the streets.

X Int. 36. Where was it that Mr. Miller was boarding or living, when you say he often stopped in going to his dinner?

A. I didn't know where he was boarding, we were very intimate—Miller used to drop in frequently, of course we were just acquaintances, and he would be passing doubtless to his lunch or dinner, I don't know which, but of course, he would drop in any time, and we were near each other, but I will not say he was going to dinner,
426 but that is the impression on my mind now. We were near to each other and he would be passing going to lunch and would drop by and see us. We were intimate at that time, we were near each other.

X Int. 37. You have said several times you and Mr. Miller were intimate at that time, now I ask were you ever an intimate acquaintance of Miller's?

A. I mean by that, I saw a great deal more of him at that time than recently.

X Int. 38. Were you intimate with him at that time or not?

A. Only in a business way. I never saw him out of business hours.

X Int. 39. Were you intimate with him in business at that time?

A. If you say calling frequently would be intimate, you may so term it; he was frequently in the office.

X Int. 40. To see you?

A. No; not me particularly, the firm of Fisher & Harris.

X. Int. 41. If you were intimate with him, why should he not have called to see you?

A. Well, I don't know as his visits were to any particular one of us; just come to see us, I don't know which one. I don't know whether he was more intimate with Mr. Fisher than myself.

X Int. 42. Who was it Mr. Miller was intimate with when he used to call so often at your place of business?

A. That I can't tell further than he was in the office and I always treated him like any friend coming in, but at the same time outside of business hours I never saw him.

X Int. 43. Can you swear to a single instance when Mr. Miller called on you at your place of business to see you on any question?

A. No, I can't remember at this moment.

X Int. 44. Can you name any person that ever saw Mr. Miller with you in your place of business?

A. Yes, sir.

X Int. 45. Name one?

A. Mr. Fisher.

X Int. 46. What is the full name?

427 A. C. S. Fisher.

X Int. 47. Can you name anybody else?

A. No, I can't remember now.

X Int. 48. Can you name any particular time when Miller was in your place of business, and when Mr. Fisher saw him there with you?

A. No, sir, I can't.

X Int. 49. Can you name any particular subject that was conversed about at that time?

A. No, I cannot.

X Int. 50. Do you ever remember having any special conversation with Mr. Miller in your place of business?

A. No, on no special subject, just a general conversation.

X Int. 51. Now, during how long a time was it he used to come in there on his way to dinner, as you stated awhile ago?

A. How long a time he did this?

X Int. 52. Yes, sir.

A. That I can't remember, sir; I don't remember how long a time. He was with that firm there I think about a year or eighteen months.

X Int. 53. What year was it?

A. 1868, as well as I remember, 1867 or 1868; part of 1867 and part of 1868.

X Int. 54. Were you not away traveling nearly all the time of 1867?

A. No, sir, I was not but very little.

X Int. 55. Were you not away traveling nearly all the time of 1868?

A. No, sir, I didn't travel a great deal; didn't do much traveling then at all; I made one or two trips. I remember of going to Omaha and in that direction once or twice.

X Int. 56. You stated in your direct examination that Mr. Miller called at your place of business, was intimate with you, and accustomed to call there on his way to dinner, and you showed to him tobacco with the Blackberry brand on it, and he had a certain conversation. Now state exactly what took place when he called there?

428 A. I can't tell you that, sir.

X Int. 57. You don't remember?

A. No.

X Int. 58. Can you swear to the date when he called?

A. Only the year.

X Int. 59. Can you swear to any one particular year?

A. Well, I know it was both parts of 1867 and 1868 we were there.

X Int. 60. That you were there yourself, but when did he call?

A. I think it was in 1868.

X Int. 61. So you say you *think* it was 1868, do you *know* anything about it?

A. Well, yes, I do know it.

X Int. 62. What do you know; do you know he called on you in 1868 at that place of business?

A. Well, I can't say; I would not say positively whether 1868 or 1867, sir.

X Int. 63. Do you know that he called on you either in 1867 or 1868 at that place of business?

A. Yes, I do know that.

X Int. 64. And that Mr. Fisher was present?

A. Yes, sir.

X Int. 65. Did you ever see Mr. Miller in your factory?

A. No, sir, I don't remember ever seeing him in the factory.

X Int. 66. Did you ever transact any business with Mr. Miller while you and Mr. Fisher were in partnership?

A. No, sir; I don't remember of any at this time.

X Int. 67. What was the firm name at the time you say Mr. Miller was there?

A. Fisher & Harris.

X Int. 68. Was there not a firm by the name of Fisher & Overall, or Overall & Fisher, there just previous to the firm of Fisher & Harris?

A. No, sir; Fisher was not in it; that is my recollection. Mr. Fisher was not with him. I think there was an Overall. I think Clark & Overall were there. Mr. Fisher I don't think was there with them.

429 X Int. 69. Were you there at all, that is, connected with them in any way at the time Clark & Overall were in business?

A. No, sir; not at all.

X Int. 70. Now, may it not be that you saw Mr. Miller in that place of business at the time Clark & Overall were in business, and that you have mistaken that for another matter?

A. No, sir; he was in our establishment. I don't know whether it is necessary to state it, but I will do so now, as you force that: Mr. Fisher has frequently brought that subject up to me, and asked me—mentioned to me before I ever mentioned it to him—that he recollected Mr. Miller's being in there frequently himself.

X Int. 71. Are you testifying now from knowledge you got from Mr. Fisher or from your own knowledge?

A. No, sir, not at all; from my own knowledge; but at the same time, sometime since, it seems to me the first time he had ever had any conversation, he accidentally met me on the street, and he asked me—told me—about Miller. He was under the impression that Miller had gotten his idea from this source.

X Int. 72. Did you remember prior to that time that Miller had called frequently in this intimate manner you mention on you?

A. Oh, I remember Miller's being there frequently; just how often, I don't remember.

X Int. 73. Did Mr. Fisher regard that thing as a successful matter that he had got up there?

Objected to as immaterial.

A. I don't remember how he regarded it.

X Int. 74. Hasn't Mr. Fisher often told you that was simply experimental what he did there?

A. No, sir; he has not. I never had but one conversation with him.

X Int. 75. Didn't you ever have conversation with Mr. Fisher about whether or not that was experimental?

A. No, sir.

X Int. 76. Didn't you have a conversation with Mr. Fisher the that date you testified here before of that very kind.

A. No, sir; I did not.

X Int. 77. Didn't you have any conversation with Mr.
430 Fisher about what was done by the firm of Fisher & Harris on the day when you testified here before?

A. On that day you say?

X Int. 78. Yes.

A. No, sir.

X Int. 79. On the morning previous?

A. No, sir; I did not.

X Int. 80. Did you meet or call upon, Mr. Fisher, either just prior to going on the stand, or during the same day, or during the day previous, and ask him in regard to what he remembered about what was done.

A. No, sir; I did not. I think I met him, as well as I recollect, several month before—casually met him on the street. He asked me if I had ever been brought in this case, and I told him I hadn't. That was some time before I was brought here in the last case. That is the only conversation, and it was a casual meeting on the street, that I have had any conversation with him about it.

X Int. 81. You are sure, are you, that it was during 1867 or 1868, when you say Mr. Miller called upon you, that he was employed by Christian Peper?

A. That is my recollection; yes.

X Int. 82. Aren't you sure about that on account of your intimate acquaintance with him at this time?

A. Well, he was with Peper; how employed, in what capacity, I have no idea.

X Int. 83. You are sure he was working in connection with Peper at that time?

A. Yes, sir; that is my recollection of it.

X Int. 84. Aren't you sure about it?

A. No, I would not be sure of it, because he might be staying there. Whether he was in Mr. Peper's employ or not, I don't know.

X Int. 85. You are sure he was staying with Peper?

A. I am sure he was making that headquarters at that time, what doing or in what capacity serving. I don't know.

X Int. 86. Now, don't you know on account of your intimate acquaintance with him at that time where he was boarding at
431 that time when he used to stop on his way to dinner and call on his intimate friend?

A. No, sir.

X Int. 87. Isn't it remarkable, with such an intimate acquaintance as existed between you and Mr. Miller at that time, that you should not know where he was boarding?

A. No, sir; not at all.

X Int. 88. You are sure that he called at the office of Fisher & Harris some time during the years 1867 and 1868.

A. Yes, sir; I am sure of that.

X Int. 89. Could you swear that you are sure that you showed him a plug of tobacco with the word "Blackberry" marked on it at that time?

A. Yes, sir; we showed it to him, both of us.

X Int. 90. You say we showed it to him, did you show it?

A. Yes; I had the plug and frequently showed it, and Mr. Fisher showed it also. I never would have recollected it, sir, but as well as I recollect, Mr. Miller thought very lightly of it, so as to speak in a light manner of it, and that is the way it impressed itself on my mind.

X Int. 91. How did he speak in a light manner of it?

A. Well, as something not done before, and he thought we were making a departure, I think.

X Int. 92. Did he say he thought it was a good thing, or not?

A. No; I think he thought very little of it. That is the reason I have this recollection of it.

X Int. 93. You said in the first place Miller said he didn't think it was a lasting mark. Did Miller say why he didn't think the mark would be permanent?

A. No, sir; I don't think he did, if so, I don't recollect it.

X Int. 94. What men were employed in the office of Fisher & Harris at the time Miller was there.

A. Well, I don't remember anybody else being there at present.

X Int. 95. Didn't Fisher and Harris employ a book-keeper or any one in the office?

A. No; Mr. Fisher did the book-keeping; he was book-keeper then himself.

432 X Int. 96. Wasn't there any person employed in the office?

A. We may have had a boy round there, I don't recollect any one else at that time.

X Int. 97. Who was the boy?

A. I don't remember that.

X Int. 98. You didn't remember certain whether you had one or not?

A. I think possibly we did. It has been a long time, and I have lost sight of it.

X Int. 99. Do you remember whether you has or not?

A. No; I can't remember.

X Int. 100. You can't remember whether you had a boy working in the office or not—but you do know Mr. Miller came in there one day?

A. Yes, sir.

X Int. 101. You remember that elegantly?

A. Yes, sir.

X Int. 102. Do you not know that Mr. Miller has been boarding since the year 1859, in the immediate vicinity of Sixth and Wash?

A. No; I haven't the most distant idea of where he has ever lived.

X Int. 103. If he had been boarding in that locality, it would not be in his way to have stopped at your office on going from Peper's to his boarding place, would it?

A. No, sir, I don't think it would.

X Int. 104. How far out of his way would it have been?

A. I don't know how far Wash is; I presume two or three squares out of his way.

X Int. 105. Wasn't Mr. Miller himself traveling most of the time during 1866 and 1867?

A. That I can't say, sir; I don't know how much of his time he did travel.

X Int. 106. Did Miller, at any time, when he came to the office of Fisher & Harris, as you say, bring any one with him; did he ever come in company with any one?

A. Well, he might have done so; but that I don't remember at this time.

433 X Int. 107. Then you don't remember to have seen him there in company with any person except yourself and your former partner, Mr. Fisher?

A. Oh, I have no doubt he was there frequently with other parties. Yes, I have no doubt about that, but I don't think of a particular person at this time.

X Int. 108. Then I ask the question again. Do you remember of his ever having come to your office with any one?

A. I say I don't remember who he ever came with, but I have no doubt he has been there with other parties.

X Int. 109. Do you remember?

A. No, sir; I don't remember the occasion; no, sir; any particular occasion of the sort.

X Int. 110. Do you remember so you could swear he ever came there with any one?

A. No, sir; I can't say that. No, sir; I presume he was.

Re-examination by Mr. Boyd:

Int. 12. About how far out of his way would Mr. Miller have had to go to pass by Fisher & Harris' place and go to Sixth and Wash?

A. I presume it would be about a block or a block and a half, possibly. I think he was in about the center of the block between Morgan and Green, on the east side then.

Int. 13. Where was the tobacco warehouse situated in those years?

A. Where it is now, Twelfth and Market.

Int. 14. To go to that, how much out of his way would he have to go in order to pass by your office?

A. Well, that would be about as direct a route as any.

By Mr. Hayden:

X Int. 111. Did you ever know Mr. Miller to go to the tobacco warehouse?

A. No, I don't remember anything about that.

Signature waived.

434 Defendants' counsel offers certified copy of the decision of the examiner-in-chief in the matter of the application for the reissue of letters patent, granted Miller and Worley December 5, 1876, marked Defendants' Exhibit "Decision."

Objected to.

Defendants close.

Testimony taken on the part of the defendants, under the sixty-seventh rule of practice as amended for the courts of equity of the United States, by L. L. Walbridge, special examiner, duly appointed to take depositions in said cause, Friday, May 9th, and Saturday, May 10th, 1879, at the office of S. S. Boyd, Esq., No. 506 Olive street, St. Louis, Mo.

Present: Arthur Stem, Esq., and J. E. Hatch, Esq., counsel for complainants, and S. S. Boyd, Esq., counsel for defendants.

S. T. M'CORMICK, being produced, sworn, and examined on the part of the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

A. My name is S. T. McCormick; residence, 2826 Saline street, St. Louis; occupation, tobacconist.

Int. 2. How long have you been engaged in tobacco manufacturing?

A. About fifteen years, ten or fifteen.

Int. 3. In what capacity?

A. About twelve years as foreman, previous to that journeyman.

Int. 4. Have you had any experience in marking tobacco?

A. Yes, sir, I have.

Int. 5. For how long a period of time?

A. Well, I have been marking—first commenced marking our tobacco for two years, and have seen tobaccos marked previous to that.

Int. 6. Please state whether or not the order or condition of the tobacco at the time of marking has anything to do with the permanency of the mark.

435 A. It has.

Int. 7. To what extent does it effect the permanency?

A. Well, it would effect it considerably. In order to make good merchantable tobacco, you want a good tough order, such as all manufacturers aim to have; as a general thing, tobacco being very soft the condition that would not be merchantable, the mark would be more liable to be erased or obliterated than if in the proper condition.

Int. 8. Would your experience in marking tobacco enable you to state whether a permanent mark can be fixed or impressed into the surface of tobacco by a single pressure?

A. Yes, sir; my experience teaches me that it can.

Int. 9. Are you enabled to state from your experience for how long a time, or to what degree of pressure, the tobacco must be subjected in order that a permanent mark may be impressed into the surface by a single pressure?

A. I have made tobacco and marked it in ten minutes, and let it remain under the first pressure ten minutes, and then the mark would remain, after packing it in the box immediately, from the first pressure.

Int. 10. Where was the first pressure applied?

A. In the molds in the hydraulic press.

Int. 11. In what way and by what device was the marking made?

A. The marking was done by a piece of wire being soldered on to the bottom plate, in the cells of the molds, and the plug put on the top of this plate with the wires on them and the pressure given as usual.

Int. 12. Have you a sample marked in that way as you describe?

A. We have; there is a plug sir. Plug marked McCormick No. 1, that is a plug marked in the manner I have described.

(Defendants offer it in evidence.)

WITNESS: It was under pressure ten minutes and packed in a box.

Int. 13. Describe the process exactly of the marking of that plug marked "No. 1," and what was done with the plug after the marking, and when it was done.

A. That was done about the 11th of April, 1879. The plates that the wires fastened to were put in the bottom of the molds,
136 or shapes some call them, and the plug put on the top of them in the molds, the molds set in the usual manner, the pressure given in the usual manner and the usual amount of pressure that we always give such tobaccos as exhibited for merchandise, remain under the pressure ten minutes and then taken out of the molds and packed in the box immediately, the box lined out or headed up, and set aside in our usual way of putting away tobacco for market.

Int. 14. When was this plug taken from the caddy?

A. May the 9th, to-day. It was a butt instead of a caddy.

Int. 15. Will you state whether or not in your experience that is, or is not, a merchantable plug of tobacco?

A. I think it is a merchantable plug of tobacco.

Int. 16. Please look at defendants' exhibit, marked McCormick No. 2, and state what that represents.

A. No. 2 represents a plug of tobacco made in the usual way of manufacturing tobacco, in a good condition for pressing, &c., and pressing the tobacco to be made in a merchantable manner, and was put into the molds on top of those plates with the cross-wire on them for marking, and pressed as we usually press such tobaccos for market, and remained under pressure for about one hour, about the length of time we usually let it remain in the molds, then it was taken out of the molds and packed into the box without going through the finisher, and ready for shipment.

Int. 17. When was this experiment made?

A. It was made on the 11th of April.

Int. 18. When was this plug taken from the caddy?

A. Stop—I wish to correct that; this was made before the 11th of April sometime; I can't tell exactly; somewhere about the 1st to the 11th of April I will say.

Last question repeated.

A. On the 9th of May, 1879.

Int. 19. What would your experience tell you as to that being a merchantable plug of tobacco?

A. I think it a very fair merchantable plug of tobacco, above the average of what I see in the market.

Defendants' counsel offers Exhibit No. 2 in evidence.

Int. 20. Please look at Defendants' Exhibit McCormick No.
437 3, and state what that represents, and under what process and in what manner it was manufactured, as far as the marking is concerned.

A. Well, this plug was put in the molds with a wire on the plate, that went underneath them, same as No. 2, and stood under pressure in the molds the same length of time as No. 2, under pressure one hour, and was put in the finisher with a plain tin on the top of it, and underwent the same pressure as the other plugs in the finisher, one hour, was taken out and packed in a box ready for shipment; our usual way of manufacturing tobacco.

Int. 21. When was it taken from the box?

A. The 9th of May, 1879.

Int. 22. At the time this plug was being pressed in the finisher, what kind of tobacco was being pressed in the finisher at the same time, plain or marked tobacco?

A. Marked tobacco.

Int. 23. Will your experience enable you to state whether or not the marking of tobacco enables you to use a lighter and thinner wrapper?

A. I cannot say that it does; we never made any difference in our wrappers of manufacturing, on account of our marking.

Int. 24. Will your experience in manufacturing tobacco enable you to give any reason why the mere marking would enable you to use a thinner or lighter wrapper?

A. Well, I don't know any reason why the marking would enable us. My experience teaches me the most profitable wrapper we can buy in the market is a thin wrapper, yielding more covering, more pounds of fillers to the pound of wrappers than any other wrapper we can buy, making it more profitable wrapper than any other.

Int. 25. What effect upon the swelling of tobacco does the mere marking have?

A. I have never noticed any. I don't think it benefits us materially in that light.

Int. 26. Will your experience enable you state whether a permanent "set" can be obtained on tobacco by a single pressure?

A. It certainly can; that is my experience; we have manufactured it that way frequently.

438 Int. 27. Do you know whether or not it was customary to manufacture tobacco of fine merchantable character, by passing it simply through the molds, without the use of the finisher?

A. Certainly; we always did some years ago, the finest tobaccos we made, we objected to putting them through the finisher, but used the molds because the molds made a finer, squarer, and nicer piece of goods. The finest tobaccos we made, and brands that we sold for the most money, as a general thing; and manufacturers in general in this portion of the country, at any rate, objected to the finisher, for the same reason that they don't make a fine, square, and even plug of tobacco. We used the finishers at the same time, and preferred the molds in preference to the finishers.

Int. 28. What do you say as to the Exhibits, McCormick Nos. 1 and 2, having obtained a permanent set?

A. Well, as to Nos. 1 and 2 having obtained a permanent set—No. 2 has a smoother face on it, being retained longer under pressure than No. 1.

Int. 29. Have either of them obtained a permanent set?

A. They have as much so as tobacco usually does, merchantable tobacco.

Int. 30. Under what condition is tobacco more liable to swell, when it is packed into a caddy after being pressed, or allowed to remain outside without being packed into a caddy?

A. O, it swells more after lying outside. The pressure is still retained on it, when it is packed into the box, the box being nailed up it retains its pressure.

Cross-examination by J. E. Hayes, Esq.:

X Int. 1. I believe you are the foreman of the Liggett & Myers Tobacco Co. of St. Louis?

A. Yes, sir.

X Int. 2. What interest have you in that Co.?

A. I have a small amount of stock in it, sir.

X Int. 3. They are using the process for marking tobacco, about which this litigation is now going on, are they not?

A. Yes, yes; we are using the process for marking the transverse lines.

439 X Int. 4. And the Co. is contributing to the defense of this case, is it not?

A. No; not to my personal knowledge.

X Int. 5. Do you not so understand it?

A. Well, I can't say positively that they are not; I am not the business manager of the business; I am simply the foreman; and I cannot affirm that point, whether they are or are not.

X Int. 6. How long have the Co. been engaged in marking their tobacco by the patented process?

A. About two years, I think.

X Int. 7. You find it a valuable process, do you not?

A. We do.

X Int. 8. You would desire to continue using it, would you not?

A. We do desire to continue using it.

X Int. 9. You think it worth while, on the part of your Co., to make some effort to have the right to continue using that process, do you not?

A. We claim the right to use it.

X Int. 10. Certainly, I understand that.

A. And it is our intention to continue to defend our right to use it.

X Int. 11. In using that process, as I understand you, you first prepare the tobacco in lumps, wrap it, have the tobacco in proper order, then press the plugs in the molds, then take the tobacco from the molds and press it in the finisher between metal plates, and have the marking or identifying device impressed into the tobacco, during the process of finishing, do you not?

A. We do.

X Int. 12. That has been the method of manufacture that you have employed for about two years?

A. About that length of time; yes, sir.

X Int. 13. You are familiar with the methods of manufacturing employed by the leading manufacturing of plug tobacco, are you not, Mr. McCormick?

A. Well, tolerably so; I am familiar with our own process of manufacture; as a general thing I am familiar with manufactures in general, with their processes.

440 X Int. 14. What proportion of the manufacturers of tobacco, that make tobacco having identifying marks impressed into the face of the plug, apply that mark by a pressure in the finisher, between metal plates, the plates having raised devices upon them for the purposes of making the mark?

A. What proportion of the manufacturers of this city, State or——

X Int. 15. What proportion of the manufacturers with whom you are familiar, and whose process of manufacture you know, manufacturers that are making tobaccos that are marked with an impression—with that impression impressed into the face of the tobacco?

A. Done in the finisher—the marks made in the finisher between the metal plates?

X Int. 16. I ask you what proportion of the manufacturers of the country, with whom you are acquainted, make that kind of tobacco, make the mark by pressure in the finisher between the metal plates, the plates having upon them raised devices?

A. Well, we do, and I don't know that I have ever seen the process going on in any other men's factories. I can't say positive that I have; I have been in one or two factories, where I have seen tins lying around, where they used—I can't say positive that the plugs I saw in the market were made in that finisher or in the molds.

X Int. 17. I ask for the best knowledge you have upon this matter as to the manufacture—not for what you have seen?

A. The only positive knowledge I have of any one making use of this device—the only positive knowledge I have is our own.

X Int. 18. Do you know of any one, any manufacturer, that manufactures plug tobacco having upon it an indentifying mark in the shape of an impression into the face of the plug that marks their tobacco in any other way than by pressing that mark into the plug during the process of finishing, by means of a raised device on the metal finishing plates?

A. I do not.

X Int. 19. You have been in various factories, have you not, where you have seen these metal plates lying around with a raised device upon them, and that could be used for no other purpose than making that mark?

441 A. I have seen metal plates which are used in the finisher in factories. I have seen metal plates in a factory though, without raised devices upon them for the purpose of manufacturing tobacco, and with raised devices which they used, or at least told me

so, though I did not see them; in the process of making it that way, they used them in the molds.

X Int. 20. Yes, I know that several experiments of that kind have been tried; you tried an experiment of the kind, did you not?

A. I did; yes, sir.

X Int. 21. And you have produced the result of it here?

A. Produced the result there, sir.

X Int. 22. Now, Mr. McCormick, looking at this exhibit put in by you in your direct examination, marked "Defendant's Exhibit McCormick No. 1," referring to the end of the plug farthest from the point where the tag is attached, don't you think you have got a very deep identifying mark there?

A. Yes, that seems to be pretty deep.

X Int. 23. A well marked impression, is it not?

A. Yes, sir.

X Int. 24. About how far did that piece of metal which made that mark project over the surface of the plate to which it was secured?

A. Well, probably—let us see—a little less than one-eighth of an inch; it may have been one-eighth of an inch or less, I think less; I never measured it, but I should judge it was less than one-eighth of an inch.

X Int. 25. The plates were about the same, were they not?

A. About the same.

X Int. 26. Mr. McCormick, if you had put a raised device—sharp pieces of metal, strong and stiff—upon a suitable backing, and had those devices stand up three-fourths of an inch from the piece, do you not think that you could have taken a plug of tobacco and laid it in there, and by means of the pressure that can be obtained in a hydraulic press cut the plug in two?

A. If the plug of tobacco was not thicker than three-fourths of an inch it would have done so.

442 X Int. 27. It would have been likely to retain that mark, wouldn't it?

A. Well, I should think it would have been a sever instead of a mark.

X Int. 28. Suppose you had cut it three-fourths off, do you know of any process of swelling that would have filled up that cavity?

A. No; I do not.

X Int. 29. Taking this exhibit, marked No. 3, was that pressed in the mold in the first place upon the same or a smaller plate to the one by which No. 1 was marked?

A. Yes, sir; by the same plate.

X Int. 30. By the same plate?

A. Well, it may not have been exactly the same plate as No. 1, but it was a series of twelve plates which we used in a frame, which we intended to be the same.

X Int. 31. A plate substantially the same?

A. Substantially the same, or as near as mechanic art could make them.

X Int. 32. About this plug, I understand afterwards it went through the finisher, that is, No. 3?

A. Yes, sir; No. 3 went through the finisher; yes; No. 3 was in the molds an hour, and then in the finisher an hour after coming out of the molds.

X Int. 33. These plates you have referred to, by which this experiment was tried, were prepared especially for the experiment, were they not?

A. I think not, sir; the plates were loaned to us by Mr. Peper. It was my understanding he used them in his regular process of manufacturing for the trade.

X Int. 34. You got them from Mr. Peper?

A. From Mr. Peper; they were loaned to us by Mr. Peper.

X Int. 35. Do you not have in your place of business regular plates for making cross lines while in the finisher?

A. Yes, sir.

X Int. 36. Why didn't you take those plates and just cut them up of proper form to go in the molds to try this experiment?

413 A. We had some kind neighbors who loaned us the plate to fit the mold, and saved our own.

X Int. 37. Does not Mr. Peper make a very deep mark?

A. He makes a deeper mark than we do.

X Int. 38. The projection on that plate of Peper's is considerably greater than the projection on the plate you use in your finisher, is it not?

A. It is not a great deal.

X Int. 39. Considerably greater, is it not?

A. Well, it is greater, but considerably—I don't know how far that would go exactly.

X Int. 40. The saying is "an inch on the end of a man's nose is considerable?"

A. It would be, yes; on mine especially.

X Int. 41. And one-sixteenth of an inch on a projection that is used for marking would be considerable, would it not?

A. No, the one-sixteenth of an inch I would not consider considerable.

X Int. 42. Well, is not the projection on Peper's plate double the projection on the plates you use?

A. I think not; I think about one-fourth more, maybe one-third more.

X Int. 43. Did you ever measure them exactly to determine?

A. I never did, sir; it might be as thick again; I don't know, but my judgment is it is not.

X Int. 44. And it might be a little more than as thick again, might it not?

A. No, I think not.

X Int. 45. Mr. Peper, after he has made his impression across the plug, presses a tooth pick into it, does he not?

A. I have seen some of Mr. Peper's; I am not able to answer positively that question directly, but I have seen some of Mr. Peper's tobacco with a tooth pick in it.

X Int. 46. You don't know, do you, whether Mr. Peper furnished you these plates from his plates, or whether they were plates that he had prepared for this experiment?

A. Not of my own personal knowledge, that is my understanding, when the plates were sent to me from Mr. Peper.

444 X Int. 47. How many experiments of this kind have you tried, Mr. McCormick, in preparing these plugs you have produced?

A. Three different experiments, I think.

X Int. 48. And how much tobacco did you make at each experiment?

A. 12 pounds; yes, made 12-pound butts, such as we shipped out in our trade—quarter butts, as we call them. Let me qualify that last remark; I said 12-pound butts of each of the three, did I not?

X Int. 49. You said 12-pound butts.

A. Well, I made two 12-pound butts in all.

X Int. 50. Look at Exhibit "McCormick, No. 2." Has not the front face of this, that is, the face where you tried to cut the block in two, been smoothed by a pressure up against the wood of the box?

A. Where we tried to cut the block in two? I don't see that we have ever tried to cut that block in two, sir; no, sir, I fail to see any place where we have tried to cut that block in two.

X Int. 51. Was not the front face of this block smoothed by the pressure against the wood of the box in which the tobacco was packed?

A. Smoothed by wood? No, sir; it was made rougher, if anything, by wood.

X Int. 52. Well, in considering what the effect of the wood was upon the plug, isn't this a plug that, in the box in which the tobacco was packed, lay with its face next to the wood?

A. It was.

X Int. 53. What became of the balance of the tobacco that was pressed at the same time of this exhibit which you have brought here?

A. Those remained in the butt on yesterday.

X Int. 54. Do you know where that butt is?

A. Yes, sir; it is in our office, I presume. It was there yesterday.

X Int. 55. Who selected these plugs from the box?

A. I did, myself.

X Int. 56. Did you not find, when you came to examine
445 the plugs, that some of them had the marks better defined than others?

A. I did.

X Int. 57. I don't suppose you selected those plugs that had the poorest defined marks, did you?

A. No, sir; I did not.

X Int. 58. But rather selected those that had well-defined marks?

A. Well, I don't know that I made that a point; I selected the plug that had the best shape to it, but not in reference to the best defined marks; wishing and aiming to get a perfect and correct statement of this, I made it a point not to pick the best defined

mark, knowing and feeling positive that that mark could always be retained on well-manufactured tobacco beyond any doubt; in selecting my plugs I selected them with a perfect view to honesty and integrity in giving my evidence.

X Int. 59. I haven't any doubt about that; but I don't suppose you would take the plugs where the marks was more or less obliterated?

A. My view was to take an average plug.

X Int. 60. You say some plugs were not in good shape?

A. Not entirely; not as good as that plug. (Indicating.)

X Int. 61. What do you mean by that?

A. Some plugs, probably, in making, had not been regularly manufactured; for instance, a little more filler in one place, which is done by our mechanics—that is, our workmen—and when pressing them often this large space will imbed itself all in the thinner place, which is done in the process of manufacture; this plug I didn't select for that reason; I wanted to show you a good piece of workmanship; these things occur in all our manufacturing.

X Int. 62. In preparing this tobacco you pressed one of these only ten minutes?

A. Only ten minutes, this one plug; that is, one lot of plugs.

X Int. 63. What was done with the rest of the tobacco in that set of molds at that time?

A. It was packed; that tobacco was packed in a box with this.

X Int. 64. How much tobacco was in that set of frames at that time?

446 A. 12 lumps.

X Int. 65. Only 12 lumps?

A. Yes; only 12 lumps.

X Int. 66. Did you have any other tobacco in that set of molds at that time?

A. I had; I had my molds full, with the exception of our other tobacco that went in the trade, with the exception of that 12 lumps.

X Int. 67. What became of that other tobacco in the other frames?

A. It was put in the trade, back in the finisher, through the usual process of manufacture.

X Int. 68. That is, it went from the pressure in the molds to the finisher and was put through your ordinary process of the finishers?

A. Not at the time. I took these plugs out that I exhibit here and let it remain under pressure; after taking those plugs out I let it remain under pressure ten minutes and took out this exhibit, and then put that tobacco under pressure.

X Int. 69. How much longer did you let that tobacco remain there?

A. The usual length of time, an hour.

X Int. 70. You gave it additional pressure after you took this out?

A. Not additional, but about the same amount of pressure.

X Int. 71. But it brought the pressure down and gave it a second pressure?

A. I gave it a second pressure, but no harder pressure.

X Int. 72. Mr. McCormick, when you have pressed a set of frames, or tobacco in a set of frames, in the molds, for say half an hour, under the ordinary amount of pressure with a hydraulic press, say 4,000 pounds to the square inch, at the time the pressure begins, can you not still further compress the tobacco without additional power? I don't know as I make myself understood.

A. I understand what you are driving at, or, at least, what brother Robinson is driving at, exactly.

X Int. 73. All right, you can answer the question.

A. He wants to convey the idea that tobacco that came
447 out of the molds when this was made, that by giving it a second pressure I made it a finer and a better piece of tobacco than I would if I had packed it at the same time (the idea is rather a cunning one), because I packed that tobacco exactly as I would if I had pulled it but once, but I gave it a second pressure because we couldn't let it stand for an hour, the usual length of time, and then pack it back in the box; I gave it a second pressure and let it remain a long time, and that was better finished than in ten minutes.

X Int. 74. Your usual practice is to let tobacco remain in the molds about an hour?

A. Yes.

X Int. 75. It makes better tobacco?

A. It makes a finer finish on the tobacco.

X Int. 76. Provided you give it additional pressure in the finisher?

A. Yes; between the metal plates.

X Int. 77. Then, in addition to that, you give an additional pressure in the box when you pack it to some extent?

A. Not always.

X Int. 78. Usually?

A. Not now.

X Int. 79. You used to?

A. Years ago we did.

X It. 80. And do now occasionally?

A. Yes; when we have large boxes; but not for the purpose of bettering the condition of the tobacco, though.

X Int. 81. Now, as a matter of fact, if you take tobacco from the molds after it has been under pressure for ten minutes and not subject it to any additional pressure whatever, but lay it out open on your desk, will not the tobacco swell?

A. It will, certainly.

X Int. 82. It will swell entirely out of shape, will it not?

A. It will not entirely swell so it will not be merchantable tobacco.

X Int. 83. But, as a matter of practice, you prevent that swelling by keeping the tobacco under pressure for some time and then finishing it again, and then packing it in a box where it will retain its shape, do you not?

448 A. Yes, that is the process.

X Int. 84. That is the usual process?

A. That is the usual process, first in the molds, and then in the

finisher; the longer it stands under pressure the better it is, the better the finish as a matter of fact.

X Int. 85. Did you not testify one of these lumps which you introduced was pressed about ten minutes in the mold and then received no additional pressure after that?

A. I think I did; I think my testimony was to that effect.

X Int. 86. Which was that, which exhibit was it.

A. I think that was No. 1—this.

X Int. 87. Now how does it happen, that is not swelled at all; how was it pressed?

A. By being placed in a box and lining put in the box to hold it in the proper position.

X Int. 88. That prevented the swelling?

A. It don't prevent swelling, but it prevents it swelling to a great extent; it swells some in the box as a matter of fact, tobacco does.

X Int. 89. But if you had taken this plug and laid it out by itself without having it kept in place by the box it would have swollen considerably more, would it not?

A. Certainly, certainly, sir.

X Int. 90. But this was placed in a twelve-pound box?

A. Placed in a twelve-pound box, yes.

X Int. 91. If it had been placed in that larger mass of tobacco it would have swollen more than it did in the twelve-pound box, would it not.

A. Well, I don't know that it would. I think not, the other plugs would have kept it from swelling some as it did in the twelve-pound box; it might have had deeper indentures in it, a little, but the more tobacco there is in a mass, as a matter of fact, the more liable it is to swell into each other, as we call it.

X Int. 92. Did you see this tobacco prepared before it went in the mold for pressure?

A. Well, I can't say I saw that particular plug; I just took
449 it right from a roll, probably ten thousand pounds of tobacco. It was taken from a box sitting in the press room.

X Int. 93. It was in very dry order, was it not?

A. I think not; no, my recollection is, it was in good order, manufacturing order, and it is in good order now.

X Int. 94. Yes, it seems to be.

A. Very good manufacturing order; I believe I could prove that by our friend Worley that it is in very good order.

X Int. 95. How long did you say this tobacco was under pressure and was retained in the boxes?

A. In the boxes? It was retained in that box about a month. Yes, my testimony was the 11th of April, and come out the 9th of May.

X Int. 96. After tobacco is retained in a box for a month it will retain its pressure—its position pretty well, will it not?

A. Yes.

X Int. 97. And become set?

A. Certainly, and become set pretty well.

X Int. 98. Please state how you came to make this exhibit that you have produced here.

A. I was asked to do it by Mr. Liggitt.

X Int. 99. Did Mr. Liggitt tell you what was the occasion for it?

A. Yes, he told me it was to be an exhibit.

X Int. 100. He told you what the question at issue was, did he not?

A. The question at issue—yes, I understand that.

Signature waived.

A. DE YONG, recalled, testified as follows:

Mr. BOYD: What is your age, residence, and occupation?

A. My name is A. De Yong; age, 59; occupation, tobacconist.

Int. 2. Please state whether you have any experience in pressing marks into the surface of plug tobacco?

A. Yes, I got up a mark when I was with Mr. Price, last
450 year, which we alternately raised and sunk, a ten-cent plug of tobacco, an inch and a half piece, alternately raised and sunk the piece.

Int. 3. How was that impression put on the plug?

A. We had the sheets made to fill the cells of the molds, and each alternate sheet was raised as far as we wanted to sink an impression into the plug.

Int. 4. After the tobacco was pressed in the mold what was done with it?

A. Sometimes we put it in the finisher if we had time enough, but more frequently they put it right in the box, and sold it to the trade.

Int. 5. Please state how that mark was as to permanency in either case.

A. It could not be more perfect; it staid there as permanent as any mark you could put on.

Int. 6. Do you know how long it was under pressure in the mold?

A. Sometimes not longer than half an hour, other times when we had plenty of time, but very seldom, over an hour.

Int. 7. Before the tobacco had been put in these molds do you know whether it had received any pressure?

A. None whatever except through the machine, as it is soft.

Int. 8. You mean the pressure received outside in the plug machine?

A. The ordinary amount; we never have a gauge on our pumps, so I cannot tell that exactly.

Int. 9. The plug machine?

A. Very little; that pressure is given to it before it gets the wrapper on it, just merely to hold it together.

Cross-examination by Mr. HAYES:

X Int. 1. Have you the plug of that tobacco that you referred to in you examination-in-chief?

A. No, sir, I have not; I am not with the concern now that made it.

X Int. 2. Do [you] know whether they are making it still?

A. I think they are.

451 X Int. 3. What concern was it?

A. William M. Price.

X Int. 4. Of St. Louis?

A. Yes, sir.

X Int. 5. How much experience have you had, personally, in the manufacture of tobacco?

A. Well, I have had a good deal, about twenty years, considerable; have been at it 23 years, and about the factory probably ten or twelve years.

X Int. 6. Manufacturing and selling?

A. Both; I manufactured for myself a whole year, besides being regular in the business with Mr. Price, and run the factory a whole year.

X Int. 7. In what position were you with Mr. Price?

A. General utility man, book-keeper, salesman, buyer, and everything else—general superintendent.

X Int. 8. Who is general superintendent there now?

A. Mr. Price himself.

X Int. 9. Well, he was also while you were there, was he not?

A. Yes.

X Int. 10. Your are at present employed in selling, are you not?

A. At present, yes; well, I am really employed as book-keeper and salesman for the Dausman & Drummond Tobacco Co.

Signature waived.

JAMES T. DRUMMOND, of lawful age, being produced, sworn, and examined as a witness, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. State your name, age, residence, and occupation.

A. My name is James T. Drummond; age, 44; Alton, Illinois; occupation, tobacco manufacturer.

Int. 2. In connection with what firm or house?

A. Dausman & Drummond Company.

Int. 3. State whether you have had any experience in the marking of tobacco by impressions?

452 A. Yes, sir.

Int. 4. For what period of time has that experience extended?

A. Since 1876.

Int. 5. Can you tell whether or not a permanent impression can be made in the surface of a plug of tobacco by a single pressure?

A. Yes, it can be done.

Int. 6. How do you know?

A. I know it from actual trial.

Int. 7. Just describe briefly what trials you refer to?

A. I experimented by putting plates in the cells of the molds and branding marks upon the plugs.

Int. 8. When were those experiments made?

A. I think the mold experiments were made in 1877.

Int. 9. What was the result?

A. The result was it produced the mark upon the plug.

Int. 10. How was that mark—permanent, or otherwise?

A. Yes, the mark would remain on the plug if the impression was made deep enough.

Int. 11. For how long a time did you allow it to remain under pressure in the molds during those experiments?

A. Generally from a half hour to an hour.

Int. 12. What was done with those plugs after they were taken from the molds?

A. They were packed in boxes.

Int. 13. Did you ever examine those plugs after they had lain in the boxes for some time?

A. Yes.

Int. 14. What was the condition of the mark when so examined?

A. The marks were perfectly plain.

Int. 15. What was the longest time you allowed the plug to remain in the caddy before you examined it?

A. Well, I don't remember; I suppose from a day to two months.

Int. 16. What would you say as to those plugs of which you have spoken having received their permanent set?

A. Well, they had received pressure enough, enough to be packed in the box. I don't know that I fully understand your question.

453 Int. 17. What do tobacconists mean by tobacco taking the "set"?

A. Oh, they mean this: that when tobacco is placed in the original molds, and a pressure put upon it, that it will take its set anywhere from ten minutes to an hour; that is, that it forms in shape immediately. It will probably form its shape in two minutes, depending upon the length of time the hydraulic pump requires; if a hydraulic pressure is used, it can be taken in two minutes, say upon one hundred to one hundred and fifty pounds of tobacco at a time, so that it will receive its permanent set in two minutes. It is generally retained, however, in a set of molds; the custom is to retain it in from ten to fifteen minutes to one hour in the molds.

Int. 18. Why do they keep it in a longer time?

A. The longer time is to give it a better finish and gloss or hardening.

Int. 19. What would you state as to the possibility of making a finely-finished plug in the molds alone, without the use of the finisher?

A. The way to make a fine-finished plug without the finisher is, first, to take the pressure upon it; take the lump out and turn the lump over in the molds. The particular reason for that is, in taking the first pressure on the molds, usually the block, as it is sometimes called, is a little too small for the cell, and the tobacco rises up on each side of the frame, between the block and the frame; the lump, then, is turned over and the edges are turned upon a smooth sheet-

iron surface; the next pressure of the lump being very solid, there is no chance of any spewing or rising of the tobacco on the opposite side.

Int. 20. What is the purpose and office of the finisher in the manufacture of tobacco?

A. The purpose and office of the finisher in the manufacture of tobacco is to dispense with the use of a double set of molds. The old-fashioned way of making tobacco, to explain it, was to first press the tobacco in one set of molds, then take it out of that set and place it in another set exactly like the first set, except the mold might be a much tighter fit, fit closer and more accurate, and after
454 taking the tobacco out of the first set of molds, place it upside down in the next set of molds and take a pressure upon it. When I first commenced manufacturing tobacco the finisher was not known in the business at all; we used what were called finishing molds; pressed the tobacco in the first set of molds, took it out of that and put it in what was called the finishing set, a set of molds constructed like the first set, except that they were a better piece of mechanism. The object of the square finisher as now used is to dispense with the finishing molds, and to place the lumps in an iron pot, usually 12, 9, or 6 inches square, or any other number of squares that you desire to make the box of tobacco, the plates being the same size as the finishing pot, and the pressure taken on that, and allowed to remain there from one to five hours, as the case may be, depends on how nice a finish you wish to put upon the tobacco. Some allow it to remain in the finisher 12 and some 24 hours, and heat the finisher with artificial heat.

Int. 21. Have you had any experience in the effect upon the marking of tobacco of passing it through the finisher after it has been marked in the molds?

A. Yes.

Int. 22. What effect does it have?

A. It don't destroy any mark that you place upon it in the molds. I will give my experience in that matter in a few words. We changed our trade mark six or eight months ago; we put a metal horse shore on a popular brand we call the cross bar, and we marked 16 equal spaces which are marked in the finisher with the ordinary plates, lined the caddy transversely and longitudinally through the plugs; we desired to put the metal shoe on all these squares, and we took out of the boxes from 20,000 to 30,000 pounds of tobacco that we had on hand at that time, and placed it in the finisher and pressed the shoe in the top without destroying the lines. That is my experience in remarking tobacco.

Int. 23. What effect upon the permanency of the mark of plug tobacco does the order or the condition of the tobacco have at the time it is marked?

A. If the tobacco is in a very soft condition it don't retain the mark as well as if it is in a dry or good condition, as it is
455 commonly called among tobacco manufacturers of plug tobacco. If in a soft condition it don't retain the mark.

Int. 24. State, if you please, whether there is any necessity of

tobacco being in good order, whether the tobacco is to be marked or not.

A. Well, there is necessity for it to be in good order, as we call it, if we desire to have the mark retained on the plug.

Int. 25. Well, suppose you don't desire to mark a plug of tobacco, but to make merchantable tobacco, state whether or not it would be necessary for the tobacco to be in good order before being pressed?

A. To make merchantable tobacco you ought to have it in good order before it is pressed, anyhow.

Int. 26. What is your impression as to the effect upon the swelling of tobacco that the mere marking has?

A. That is to say, if tobacco is marked the swelling of it will obliterate the marks?

Int. 27. No. What is your opinion as to the effect upon the swelling of tobacco the marking has: that is, what effect does the mark have?

A. It has none.

Int. 28. What do you say as to your being able to use a lighter wrapper when you mark tobacco than you could use if you did not mark it?

A. There is no difference in the wrapper; can mark one just as well as the other.

Int. 29. My question is, what effect does the marking of tobacco have on the quality of tobacco, of the wrapper that you must use?

A. None whatever; the only tendency of the marking is to fasten the wrapper down more closely to the filler; it don't make any difference whether the wrapper is thin or thick, nor bright or black.

Int. 30. Please state what your experience teaches you in relation to the possibility of making a fine tobacco without the use of the finisher, if you have any experience in that respect.

A. Well, we make tobacco, the finest tobacco we make, we make without the finisher entirely, by turning it in the mold and
456 pressing it from the molds to the box, and the reason of it is, if we place it in the finisher the pressure of the finisher sometimes runs the edges of the tobacco together and makes what we call saw tooth or ragged edges. When it comes from the mold it is perfectly square and plain, and our highest-priced tobacco is made in that way.

Cross-examination by Mr. HATCH:

X Int. 1. Mr. Drummond, will you please state how you are manufacturing your tobacco at present in your regular course of business, you are manufacturing under Miller & Worley, are you not?

A. The regular course of manufacture is first to place the molds—press it and take the molds out, and put it in the finisher and press it, some of it marked and some of it not, it depends on the grade and quality and kind we manufacture. We place it in the finisher, and from the finisher to the box. That is the usual method.

X Int. 2. The usual practice, whether you are marking tobacco or not, is to first press in the molds and then in the finisher?

A. With the exception of certain grades of fine tobacco we never put them in the finisher, but turn them in the molds.

X Int. 3. Explain more fully what you mean by saying you turn in the molds; do you not thereby give the tobacco a second pressure in the molds?

A. Yes.

X Int. 4. Explain a little more fully.

A. Well, turning in the molds means, in the first place, a set of molds will hold anywhere from one hundred and fifty to three hundred lumps; the blocks are taken out of the several cells, and the molds turned upside down, and the reason of that is, in the first pressure that is taken on the mold it forms a feather edge, as it is called, and it is on the top side of the lump; the blocks seldom ever fit so close but that an edge will form on the lump, and the pressman will take it out of the frame; at the time it is taken in this position, then the edges goes on a sheet-iron plate and the pressure is put a second time on the lump, the same pressure as is given the first time. That is what I mean by turning in the molds.

457 X Int. 5. Doesn't that turning in the molds serve to give a second and additional pressure to the plugs, and to give it a finer finish?

A. Yes; no question about that.

X Int. 6. So, as a matter of fact, you give successive pressures to all the tobacco you manufacture?

A. Yes; we give two pressures, I might say, to all the tobacco manufactured in our factory.

X Int. 7. Is not that the usual practice with the trade as far as you know?

A. I think it is, and I think it has always been the practice.

X Int. 8. And where a second is not given in the finisher, the usual method of giving it is to turn the plugs in the mold, and give it a second pressure in the mold?

A. Yes; formerly, instead of using the finisher, we had what is called a finishing mold; took it out of one set of molds and turned it into another set.

X Int. 9. What was the difference between them?

A. The finishing set were not over half the depth of the first set; the first set generally held twice the number of frames.

X Int. 10. Wasn't the finishing set of molds generally more perfectly constructed and nicely adjusted?

A. Yes; a much better piece of mechanism than the first.

X Int. 11. What would be the the effect if you were to take a plug of tobacco, made as ordinarily made, in the ordinary process of making tobacco among the trade, and press it say ten minutes in the mold, and then take the plug out and leave it out on your desk exposed to the air for ten days to two weeks?

A. Well, the whole mass would swell.

X Int. 12. It would?

A. Yes.

X Int. 13. To what extent.

A. I should think it would depend on the order of the tobacco in the original press. Tobacco is something that gathers moisture very rapidly and dries rapidly when exposed, under certain conditions it would probably swell to one-third; it would increase the size one-third of the original size.

458 X Int. 14. Would it swell to such an extent as to make it unmerchantable, as the term is ordinarily used in the trade?

A. Yes; I think it would.

X Int. 15. How is this swelling prevented; by pressing, is it not; by first giving the tobacco a complete pressure in the mold and then give it an additional finish, so as to make a smooth, hard surface, into which will gather very little air, and then packing it into a box, and retaining it in the box under pressure?

A. Well, the usual method to prevent swelling is to press, in the first place, hard enough to allow it to remain under pressure long enough, and to pack it from there into a box immediately without exposing it at all; that is the best receipt to prevent swelling I know of.

X Int. 16. Now, isn't it a fact that a piece of tobacco that has a smooth, hard-finished surface will gather moisture from the atmosphere less than a piece of tobacco that has a rough surface?

A. Well, a piece of tobacco that has a rough surface, that has not been finished when packed in the box, if allowed to remain the wrapper will start from the filler and leave the filler. If it is allowed to remain under pressure a long time, or remain in the box some length of time, the wrapper takes a set to the filler and will not start from it by exposure afterwards.

X Int. 17. Now, isn't it a fact that the pressure of indentations into the face of a plug tends to unite the wrapper to the filler?

A. There is no question about that in the world: the indentations passing into the face of the plug.

X Int. 18. Doesn't that, to a certain extent, overcome the tendency of the wrapper to separate from the filler?

A. That overcomes the tendency of the wrapper to separate from the filler and tends to prevent the whole mass from swelling.

X Int. 19. Does it not bind the laminae of the tobacco that make up the plug more firmly together?

A. There is no question about that; if you take and press a number of indentations into a plug on one side, or both sides, that it has a tendency to solidify the tobacco to a greater extent than if there are no indentations.

459 X Int. 20. When you impress into the surface of the plug a large number of indentations for instance, like the brand known as "Purity," made by Miller & Worley, or the brand "Honesty," as made by Finzer & Bros., does not that enable the manufacturer to use a cheaper wrapper and a thinner one than would be required in making the same tobacco with equal finish, but perfectly plain and smooth without and indentations?

A. I think that the indenting of tobacco, or the printing of names

or marks over the surface of it, would enable the manufacturer to use a thinner wrapper for this reason: it would destroy the appearance of the wrapper, printing does destroy the general appearance of the surface to such a degree that a thinner wrapper might be used than where a smooth surface had to be made. In making a smooth surface piece of tobacco, you have to use the best quality of wrapper in order to get a level uniform appearance; where a name is printed, or marks, trade-marks, or anything is printed on the plug, it destroys the appearance of the wrapper. The first thing that catches the eye is the mark, and I think it would enable the manufacturer to use a much thinner leaf than where a smooth surface had to be made.

X Int. 21. Have you purchased a limited shop right in the Miller & Worley reissue now in suit?

A. Well, I purchased a limited shop right from Miller & Worley in 1877.

X Int. 22. Under the patent in suit?

A. Under the patent in question; yes, sir.

X Int. 23. State whether or not you made that purchase after you had made the experiment about which you testify in chief?

A. Yes, I made the purchase afterwards.

X Int. 24. Now, you manufacture under that patent?

A. Yes.

(Signature waived.)

WILLIAM H. RYAN, being produced, sworn, and examined as a witness on the part of defendant, deposes and says:

Direct examination by S. S. BOYD, Esq.:

Int. 1. Do you know John K. Cahill?

460 A. Yes, sir.

Int. 2. Please state whether you have had any conversation with him in relation to his testimony given in this case; and, if so, when the conversation was had and what was said.

(Objected to.)

A. I think it was along about the first of February, I was passing down Fifth street, and Mr. Cahill, I think, stopped me as I was passing; I shook hands with him, and he said that he had given his testimony in this case, and that he had stated in his testimony that he had never seen a mold with "Blackberry" on it, and he said, after going home that night and refreshing his memory and studying over the matter, that he had found that he had seen it; that he remembered distinctly of Mr. Boyce bringing a block up in the factory and showing it to him, and he asked me if there was any way of correcting his testimony, and I told him I did not know of any unless he would call on Mr. Boyd, and he said he would do so.

(Objection renewed to the whole testimony.)

(Signature waived.)

JOHN L. DELAHUNT, being produced, sworn, and examined as a witness on the part of the defendants, deposes and says:

Direct examination by Mr. BOYD:

Int. 1. What is your name, age, residence, and occupation?

A. My name is John L. Delahunt; age, thirty-five; residence, Jeffersonville, Indiana; occupation, clerk.

Int. 2. For whom?

A. S. J. Force & Co., Louisville, Kentucky.

Int. 3. Please look at the sample marked Defendants' Exhibit Delahunt, No. 1, and state what you know in regard to the marking of those samples.

A. I saw them brought down out of the third story of the house, or the second story, and witnessed them put in the molds.

Int. 4. What house?

167 A. S. J. Force & Co.; afterwards they were put in the molds with plates, and with the impression that the leaf raised on it present there, in the bottom of the cells of the molds; a lump placed on the top of it, with other tobaccos, put under the pressure, and remained under pressure fifteen minutes, and packed directly in the box.

Int. 5. Where were those plates with the impression on them obtained from?

A. We had them in the city of Louisville.

Int. 6. How do they compare with the plates you use in your regular manufacturing?

A. Just near about the same thing, only there is four of them on one plate, and this was made to fit the cell, the old portion of it——

Int. 7. One of the old plates cut to fit the cell?

A. Yes.

Int. 8. What other tobacco was being manufactured at the time you say this was being manufactured with other tobacco?

A. The same class being manufactured for the market.

Int. 8. What was done with the other tobaccos that were being pressed in the molds at the same time with these samples?

A. They were placed back in the molds and remained a longer time, and then were finished as usual.

Int. 9. When was this first sample made, what date, and when was it marked?

A. I think the 9th of April.

Int. 10. When taken from the caddy?

A. On the 9th of May, 1879.

Int. 11. Please look at sample marked Defendants' Exhibit Delahunt, No. 2, and state what you know about the marking of that tobacco.

A. This was brought down in the same way, and placed in the molds with the plates in the bottom of the cells, and staid under pressure one hour, and packed directly from the molds into the box.

Int. 12. When was this experiment made, and when was the tobacco taken from the caddy?

A. The experiment was made about the 9th April, and taken from the box the 8th of May, 1879.

462 Int. 13. Now, please look at the Exhibit Delahunt, No. 3, and state what you know in regard to the marking of this.

A. No. 3 was placed in the molds in the same manner, with the plates in the bottom of the cell, and staid under pressure in the molds forty minutes, and then placed in the finisher and remained in the finisher half an hour, and packed direct from the finisher into the box.

Int. 14. When was this experiment made, and when was the plug taken from the caddy?

A. The 9th of April, 1879, and taken from the box the 8th of May, 1879.

Int. 15. Please look at the Defendants' Exhibit Delahunt, No. 4, and state what you know in regard to the marking of that.

A. No. 4 was placed in the molds on the plate, and marked in the molds, and remained there the usual time, and taken out and packed in the finisher between smooth tins with other tobacco, and remained there under pressure the usual time; was taken out, and was never placed in the box, was left out.

Int. 16. You say this was packed in the finisher with other tobacco?

A. Yes, sir.

Int. 17. What was done to the other tobacco in the finisher at the time this was there?

A. The other tobacco was marked, and was placed in alternately in the finisher with the plates, for the purpose of marking it, and staid in the usual time, and was taken out and packed in the boxes for market, and this one remained out.

Int. 18. Now, in regard to all these experiments, the first, second, and the third and fourth, do you know whether the samples had either of them been pressed before being put in the molds?

A. Neither of them.

Int. 19. How do you fix the time of these various pressures?

A. I timed them with my watch, sir.

Cross-examination by J. E. Hatch, Esq.:

X Int. 1. You are in the employ of Force & Co., the defendants, are you not?

463 A. I am.

X Int. 2. You testified that you were a clerk; what is your position in that capacity?

A. I am shipping clerk, collector, &c.; a general clerk.

X Int. 3. Do you have anything to do with the manufacture of tobacco?

A. Nothing.

X Int. 4. Have you ever had any experience as a tobacco manufacturer yourself?

A. None, no practical experience, only what I could pick up in the house.

X Int. 5. Only what you could pick up about the house in your duties as clerk?

A. Yes, sir.

X Int. 6. You have been about the works, though, of Force & Co.?

A. Yes, sir.

X Int. 7. You know how they manufacture?

A. Well, I can't say that I know all the process—I can't say I know all the details of it; I know about how it is done.

X Int. 8. Didn't you ever pay any particular attention to the details of the manufacture?

A. No special attention; no, sir.

X Int. 9. So you are not familiar with the details?

A. No, sir.

X Int. 10. Have you ever observed the processes by which they prepare the tobacco for pressing?

A. Well, to some extent, I have.

X Int. 11. Are you not familiar with the details of that process?

A. Not specially; no, sir; it is outside of my line of business, that part of it.

X Int. 12. Where is that process carried on; is it in a part of the works separate from where you are engaged?

A. We have two three-story houses; the second and third story over the place where my office is is used for that purpose, and all three rooms in the three houses are used for that purpose, but they are connected one part with the other.

464 X Int. 13. Are you familiar enough with the process of preparing tobacco for pressing, and with the condition of the tobacco, and the different stages of manufacture, so that by noticing a plug when it was going into the press, or coming out from the press, you could tell what condition it was in, that is, how it had been prepared, how long it had lain to dry, &c.?

A. Could I know without seeing it?

X Int. 14. Without seeing the process, simply from an examination of the plug?

A. No, sir; I could not; I might tell the condition, whether it was in a proper merchantable condition, but I could not tell how long it had laid, or anything of that kind.

X Int. 15. In the manufacture of the samples that you have identified in your direct examination, I understand, from your testimony, that you saw them first when they were brought down stairs to be put in the press?

A. In the molds; yes, sir.

X Int. 16. You didn't see how they were prepared?

A. No, sir.

X Int. 17. You don't know how long those plugs had lain after they had been prepared?

A. No, sir.

X Int. 18. For anything you know they may have lain up stairs for ten days before that?

A. Yes; I know nothing to the contrary. Understand me; they were not in the plug when I saw them; they came down in a lump.

X Int. 19. Ready to go in the mold?

A. Yes, sir.

X Int. 20. Have you with you one of the pieces of the plate that made the impression?

A. No, sir.

X Int. 21. How many samples did you see made, aside from those that are here produced?

A. How many samples, or how many experiments?

X Int. 22. How many experiments?

A. We made five.

465 X Int. 23. Five experiments?

A. Made six—two additional ones besides those that we made.

X Int. 24. What were those additional experiments?

A. I have a memorandum; one of them was pulled and turned in the mold, turned and marked in the molds, and packed direct in the box; stood in the molds, first pressure one and a half hours, second pressure half an hour.

X Int. 25. Why were not those produced?

A. We could produce them.

X Int. 26. I didn't ask you that; I asked you why they were not produced.

A. It was not presumed to be necessary.

X Int. 27. How many plugs were manufactured in each one of these experiments?

A. For the experiments?

X Int. 28. Yes.

A. Four; that is, there would be four of these "Delahunt" twelve-inch plugs and sixteen of these "Delahunt No. 1."

X Int. 29. What became of the balance of the tobacco that was in the mold at the same time that these experiments were made?

A. They went on through the ordinary mode of manufacture. One of them—No. 4, I believe it is—was packed immediately out of the compress, after being taken out, in the box, and placed ready for sale.

X Int. 30. Do you mean it was placed on sale?

A. It was packed in the box and stored, ready for market, sir—the tobacco that went through with that plug.

X Int. 31. It all went through at the same time that this plug did?

A. Yes, sir.

X Int. 32. Did it go through the finisher?

A. Yes, sir.

X Int. 33. Went through the finisher in the usual way, but that was marked in the molds, as my testimony stated yesterday, and placed between smooth tins, and the others were put in there and marked.

X Int. 34. And the other, all except this plug, prepared for
466 this case, that was placed in the finisher, and received its mark in the finisher?

A. Yes, sir.

X Int. 35. This Exhibit No. 4 is then one of four lumps?

A. Not that one; no, sir; that is the only one that was put in there.

X Int. 36. This is the only one?

A. That is the only one that was put in there.

X Int. 37. Do you know, Mr. Delahunt, whether or not any experiments in this matter had been tried by Foree & Co. before this test which was exhibited to you?

A. Was there any made previously to that?

X Int. 38. Yes, sir.

A. None that I have any knowledge of.

X Int. 39. Didn't you hear anything about some trials that were made there before you were called to examine the result?

A. I heard nothing about them, sir.

X Int. 40. Did you know what those four plugs were prepared for?

A. I can't say that I did; I had an idea what they were for.

X Int. 41. How did you get that idea?

A. In a general conversation.

X Int. 42. General conversation with whom?

A. With Mr. Foree.

X Int. 43. Which Mr. Foree?

A. Mr. Sam. Foree.

X Int. 44. What did he tell you about them?

A. He wanted to make an experiment to see if that experiment I made there could be done as it is.

X Int. 45. Just relate all the conversation that took place between you and Mr. Foree about it?

A. That is about the conversation, the pointed conversation.

X Int. 46. Do you know why it was that you were not called up stairs to see how the tobacco was prepared before it went through this process of marking?

A. It is not my place, sir; I have no knowledge of it.

X Int. 47. But you are put on as a witness here in that matter?

A. To identify what I saw, and nothing more.

467 X Int. 48. Then you didn't consider it your business to see how that tobacco was prepared before it was pressed?

A. No, sir.

X Int. 49. You simply looked at what you were told and requested to look at, and didn't look at anything you were not requested to look at?

A. I had no reason to.

X Int. 50. You were simply requested to see how it went through the press?

A. Yes, sir.

X Int. 51. And to identify it?

A. Yes, sir.

X Int. 52. And you looked at nothing you were not told to look at?

A. Well, don't know what you mean by looking at nothing. I saw everything.

X Int. 53. I mean you saw how these things went through the press.

A. Exactly.

X Int. 54. And you saw nothing more; you didn't see how they were prepared for the press?

A. No, sir.

X Int 55. No, of course not; in all your experience at Foree & Co.'s, did you ever see any tobacco pressed there in this manner and marked in this manner in the mold, except this that you have here produced, and the few lumps that were marked with them?

A. No, sir.

X Int. 56. Where did you say the plates were obtained from with which these were stamped?

A. We supplied one of our regular plates where there is four lines of these leaves.

X Int. 57. That is one of the finishing plates?

A. Yes, sir.

X Int. 58. That you saw in the finisher?

A. Yes, we supplied that; had it so it would fit in the cell.

X Int. 59. And then put that right in the bottom of the cell?

A. Yes, sir.

468 X Int. 60. How is that finisher plate made?

A. It is made out of some kind of metal composition.

X Int. 61. Cast steel with this device raised upon it?

A. Yes, sir.

X Int. 62. About how far do these devices on that plate project over the surface of the plate—the cross projection now on the device?

A. That is a question I can't answer from memory; there would be very little more than what these indentures are in that leaf there.

X Int. 63. When this plug came out of the mold was this backing plate, as you call it, still adhering to the plug?

A. Yes, sir.

X Int. 64. When was the backing plate removed?

A. Immediately after taking out of the mold.

X Int. 65. And the plug was packed in the caddy in what shape?

A. Just as my testimony given yesterday; I can't remember precisely.

X Int. 66. Suppose you state how it was packed without referring to your testimony yesterday?

A. How?

X Int. 67. Yes.

A. It was just taken from the finisher or molds and packed immediately in it, and placed under the screw press, headed down, and lined out as usual.

X Int. 68. How much pressure was put on the screw?

A. Enough to pack it down compact, to prevent swelling as usual, an ordinary pressure.

X Int. 69. How much is ordinary pressure?

A. I never made it a study, and can't tell exactly.

X Int. 70. How do you know it was ordinary pressure if you haven't made it a study?

A. I can tell just by the action of the pressman—his action in pulling on the small bar, and when it comes down solid he stops.

X Int. 71. Referring to this Exhibit No. 1, state what kind of boxes these were packed into.

469 A. What I call a quarter butt.

X Int. 72. What else was packed in that butt with them?

A. Some other tobaccos.

X Int. 73. What kind of tobaccos—just from the press?

A. Yes, some of the same, except it didn't have the marks.

X Int. 74. In what part of the boxes were these put?

A. In the centre.

X Int. 75. In the centre of the box?

A. Between the others.

X Int. 76. Looking at this sample plug that I now call your attention to, in Exhibit No. 1, the one that has the impression most strongly defined on the one side, but the back of which seems to be perfectly plain and smooth, is it not remarkable to you, seeing as much tobacco as you have seen, that there is almost no mark of pressure upon the smooth back of that plug, that it has no mark of another plug pressing against it, which would generally make it somewhat rough?

A. Placed between layers of smooth tobacco, that might come exactly between the plug in that way; consequently I cannot see any reason why it shouldn't be smooth.

X Int. 77. How do you say that smooth tobacco was prepared that was packed with this?

A. In the same way that that was put in the molds, only without the plate being in there.

X Int. 78. But it was perfectly smooth tobacco?

A. There was no mark on it of any kind.

X Int. 79. A hard, smooth lump?

A. The same way as this.

X Int. 80. These are hard smooth lumps?

A. Yes, sir.

X Int. 81. Very hard, are they not?

A. No, sir; not very.

X Int. 82. Looking at Exhibit 1, don't you consider that pretty hard tobacco?

A. I do not, sir.

X Int. 83. About how thick is that plate in the finisher, the finisher plate that has the raised device upon it?

470 A. This particular plate you mean?

X Int. 84. Well, yes, you may answer in reference to that; I suppose they were the same?

A. One-eighth of an inch.

X Int. 85. About one-eighth of an inch thick, and then the projections are raised on them, you say, slightly more than the deepest impression in this plug?

A. Well, the surface of the plate would be level, of course, and

these of the leaf being counter-sunk, or the indentures being counter-sunk, the others would bring it up to about the surface—up to about that leaf—maybe a little more.

X Int. 86. Did you ever see that plate that was cut for the purpose of making this plug before it was brought down to be used?

A. I took it and had it cut myself.

X Int. 87. And you say the devices were raised upon it slightly more than this deepest impression here?

A. Well, I don't know as I can express to you exactly how it is; yes, this would be raised from the bottom of this indented line, of course, the top of the surface.

X Int. 88. I mean the line, for instance, that made the bottom of the "E," what I am after is to see how high that highest point and the lowest point in the "E" stands above the ordinary level of the plate?

A. It don't stand any.

X Int. 89. Is it cut down any?

A. Yes, sir.

X Int. 90. How can that be?

A. You will understand, say, for instance, that is the plate (indicating), how far above this surface do these lines that make that indention stand above the surface of the plate?

X Int. 91. Yes, that is what I wish to get at exactly.

A. Stands above the surface here?

X Int. 92. Of the plate; this raised projection, I want, of course?

A. Just about the distance I have described.

X Int. 93. That is a little more than the deepest depression.

471 A. Probably a little more—a fraction more.

Signature waived.

Defendant's counsel introduced in evidence a copy of letters patent granted Miller & Worley August 22d, 1876, No. 181,512. To which plaintiffs' counsel objected, as not in sur-rebuttal.

S. S. Boyd, being sworn and examined on behalf of the defendants, testified as follows:

The original molds, Blackberry Exhibit, were sent to Cincinnati by me on the 7th of December, 1878, and were received by me, by express, from Louisville, on the 4th of January, 1879.

Signature waived.

To which plaintiffs' counsel objected, as not in sur-rebuttal.

472 *Defendants' Testimony.*

Printed Record C.

ANTON MILLER *et al.*
vs.
THE LIGGETT & MYERS TOBACCO COMPANY *et al.* } In Equity.

Proofs on the part of defendants for final hearing, taken before L. L. Wallbridge, special examiner, April 7th, 8th, and 9th, 1880, at

No. 121 Olive street, St. Louis, Missouri, under and pursuant to the 67th rule in equity, as amended.

Present: John E. Hatch and James A. Beattie, for complainants; S. S. Boyd, Esq., for defendants.

EDWIN F. SMITH, a witness of lawful age, produced on the part of the defendants, having been duly cautioned to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined by S. S. BOYD, Esq., on behalf of the defendants, deposeth and saith as follows:

Counsel for complainants objects to the deposition of this witness, if called for the purpose of attempting to show the invalidity of the patent sued on, for the reason that that question has been adjudicated in the case of Miller against Foree, in the district of Kentucky, in which the defendants were parties contributing to the defence, and employing their own counsel and furnishing funds, so that having had their day in court they are estopped from impeaching the validity of the patent, except in a proper proceeding had to set aside the former decree.

Int. 1. What is your age, residence, and occupation?

A. Edwin F. Smith; forty-four years of age; residence, Evening
473 Shade, Sharp county, Arkansas; occupation, pretty hard to tell, not doing much of anything now; I am a little of a farmer, little of a tobacco manufacturer, a little of everything; my health is bad, and I am not doing much of anything. The factory is not running much now.

Int. 2. What was your occupation in 1874–5?

A. I was manufacturing tobacco.

Int. 3. At what place?

A. At Evening Shade.

Int. 4. What kind of tobacco were you manufacturing?

A. Plug tobacco.

Int. 5. In what manner did you manufacture it, what machinery did you use?

A. I used a shape press and common molds.

Int. 6. Please look at the plate shown you and state what it is.

A. It is a plate of zinc with my name on it.

Int. 7. By whom was that plate made?

A. Myself and George Davidson.

Int. 8. George Davidson of where?

A. Evening Shade.

Int. 9. For what purpose was that plate made?

A. For marking the name in the tobacco.

Int. 10. What time was the plate made?

A. Some time in the warm weather, in 1875.

Int. 11. After the plate was made what was done with it?

A. It was used in marking tobacco.

Int. 12. In what way did you use it?

A. By putting it in the cell in the molds and putting the plug of tobacco on top of it.

Int. 13. What was done with the tobacco after it was taken from the molds?

A. Packed in the caddy.

Int. 14. Then what was done with it?

A. It was generally sold.

Int. 15. How long did you continue marking tobacco by means of that plate in the mold?

474 A. I don't recollect the exact time; I marked it a month or two, probably, and then sent and got a finisher.

Int. 16. After you got a finisher what did you do with the plate?

A. I used that in the finisher by putting it under the plug of tobacco; putting it on top when packing.

Int. 17. How was your tobacco packed in the finisher; in what way was your tobacco packed in the finisher?

A. It was packed in layers; it was a twelve-inch finisher, and they were six-inch plugs packed in layers, with sheets of tin between them.

Int. 18. For how long a time did you mark your tobacco in the finisher?

A. Well, I can't say; I don't recollect.

Int. 19. At what time did you cease marking, as near as you can fix it?

A. The time I ceased working in the factory was along in April some time.

Int. 20. In April of what year?

A. 1876; I hadn't done much for some time before, though.

Int. 21. How long, can you tell?

A. No, sir, I can't tell you exactly.

Int. 22. Can you tell anything about how many weeks or months you marked your tobacco in the finisher?

A. No, sir, I cannot; I commenced—I recollect it was warm weather when I commenced—when I made the plates. I was engaged in shipping tobacco in the fall and winter, and manufactured some along, not a great deal.

Int. 23. Can you tell whether you marked any in that finisher during the winter?

A. Yes, I did.

Int. 24. How many frames did you have?

A. Twelve.

Int. 25. Before this tobacco went in the finisher, what was done to it?

A. Nothing, after it was shaped; it went right from the shaper into the finisher.

475 Int. 26. What was done with the tobacco you marked in the finisher?

A. It was packed in the caddies.

Int. 27. What was done with the caddies?

A. Sold.

Int. 28. Did you ever see any of this tobacco after it had been packed in the caddy?

A. Yes, sir.

Int. 29. How was the mark as to distinctness?

A. You could see it very plain.

Int. 30. How came you to have this plate made; when did you first conceive the idea of doing it?

A. In 1874; I commenced making tobacco in 1874, and I had a set of wooden molds that did not have very good face to them, and I plated them; I had heard of their being plated, and I placed them myself, there being no mechanics there, and no way of getting it done, and the screw heads showed that I screwed the plates with, showed in the tobacco, and, noticing them, gave me the idea of marking my name in the plug.

Int. 31. When did you first do anything towards carrying out that idea?

A. Not until the summer of 1875.

Int. 32. What was it you did?

A. I, in the first place, cut out some letters, initials of my name, and placed them in the cells of the molds loose.

Int. 33. Of what did you cut them?

A. Of sheet zinc.

Int. 34. What was the effect on the tobacco when you used those letters?

A. Very good; it was hardly deep enough.

Int. 35. Who was your foreman in 1875 after you began to mark in the molds, as you say?

A. Robert Lee.

Int. 36. What men did you have in your factory?

A. I don't recollect now, sir; I recollect of but one, Anderson; I had a man named Anderson.

Int. 37. What were his duties?

476 A. He done most anything.

Defendants offer the plate in evidence, marked "Defendants' Exhibit, Smith Plate."

Int. 38. When you marked in the finisher as you say with metal plates interposed between the layers of tobacco, where did you put this metal plate bearing the name of E. F. Smith?

Objected to, as not correctly stating what the witness has testified to, and for the reason that in the shape in which it is put it is leading.

A. I put it on top of the sheet of tin and the plug of tobacco on top of it.

Cross-examination by Mr. HATCH:

Counsel for complainants, without waiving the objection to the deposition heretofore entered, proceeds to cross-examine:

X Int. 1. How long did you say you manufactured tobacco at Evening Shade?

A. I commenced in the spring of 1874 and manufactured till the spring of 1876 at that time; I manufactured some since then though.

X Int. 2. About how many of those plates like Exhibit Smith Plate did you have?

A. Well, sir, I don't recollect; I think there were two, but I did not find but one; I couldn't get any one to make them there, and I expected to come to St. Louis and get them made in the spring; I just made those two to see what I could do.

X Int. 3. You think there were two, but you could not find but one?

A. I couldn't find but one; no, sir.

X Int. 4. Did you ever make any other plate with your name on it to be used in the manufacture of tobacco except those two?

A. No, sir.

X Int. 5. The other one, if there was another one, was the same as this one here exhibited?

A. Yes, sir.

X Int. 6. You did not mark a great deal of tobacco with those plates then?

177 A. No, sir, I did not.

X Int. 7. You have mentioned something about using those plates in the finisher; were they not very inconvenient for use in the finisher?

A. Yes, sir.

X Int. 8. I suppose the inconvenience would be whenever you placed those plates on the top of a tin plate, such as counsel mentioned in his question, having only one or two of them it would make an uneven surface, would it not?

A. Yes, sir.

X Int. 9. The finisher was the usual size?

A. I can't tell you what the usual size is.

X Int. 10. What was the size of the finisher that you used?

A. Well, I don't know the size; I think it was a large finisher; I have never seen a great many.

X Int. 11. Give about the size.

A. I don't know that I could give it; it was about twelve inches square.

X Int. 12. Now, do you remember whether you used one or two plates of this Exhibit Smith Plates in that finisher?

A. I don't recollect; I used some letters that I cut out; first out of sheet zinc, like that I distributed myself in that experiment first, after I had seen the impression of the screw heads; but I don't recollect so well about the plates; Davidson recollects, I think, better than I do; he says there was two.

X Int. 13. You don't recollect so well about using those plates in the finisher?

A. No, sir; the idea I had was to experiment to see whether it would work or not.

X Int. 14. What did you find the result of your experiment to be?

A. Very satisfactory.

X Int. 15. Did you find there was difficulty with it?

A. No, sir, not in getting the impression of the name or any other brand that I wanted put on.

X Int. 16. Did you have trouble with it by reason of air getting underneath the finishers and making bubbles or blisters?

478 A. No, sir; Mr. Lee, I believe, told me that it would do that, but I never found it so.

X Int. 17. Now, how could you finish the other pieces of tobacco that were in the finisher at the same time that this plate was there; would not the fact of this plate being there make a difference of thickness?

A. Yes, sir.

X Int. 18. How, then, could you finish the other pieces of tobacco?

A. It made a little difference; that, of course, would be pressed a little tighter than the others, and be a little thinner, but you would hardly notice it.

X Int. 19. You never regularly adopted this in your business to mark your tobacco, did you?

A. No, sir.

X Int. 20. How did it come about that you stopped business in the spring of 1876?

A. The Government took my factory.

X Int. 21. Why did the Government take your factory, Mr. Smith?

A. Well, sir, it was for alleged things carried on wrong in the factory, not sustained though, however.

X Int. 22. But the Government took your factory, did it?

A. They stopped me for a year.

X Int. 23. Did they sell out your tobacco?

A. Yes, sir.

X Int. 24. Here in St. Louis?

A. Yes, sir; there were three hogsheads sold in St. Louis.

X Int. 25. They shut up your shop in Arkansas?

A. Yes, sir.

X Int. 26. What were the allegations on which that was done?

A. Well, sir, I don't recollect now; you can tell by asking Mr. Lee there, I suppose.

X Int. 27. Well, state as near as you can remember what the allegations were.

A. Well, I don't recollect all of them.

X Int. 28. O, I don't ask for all of them; just state as near
479 as you can remember.

A. Well, the allegation was that I had sold tobacco to different parties without being stamped.

X Int. 29. Did you sell tobacco to different parties without being stamped?

A. No, sir; I didn't know that I was on trial for that though now.

X Int. 30. The allegation, then, was a false allegation against you, was it not?

A. Isn't that about as relevant to this case as the other?

X Int. 30½. Well, inasmuch as you have answered the other, I guess I will put that question.

A. Yes, they were partly false.

X Int. 31. Who made these allegations?

A. Mr. Lee.

X Int. 32. What Mr. Lee?

A. Mr. Robert Lee.

X Int. 33. This gentleman that sits there?

A. Yes, sir.

X Int. 34. What was his object, do you suppose, in making false allegations against you that resulted in shutting up your shop?

A. Well, I don't know; parties told me down there that he had said if I did not pay him some money that he would do it. They were not under oath.

X Int. 35. Parties told you if you did not pay him a certain sum of money that he would do it?

A. Yes, I was told so only by parties; I don't know whether he told them so or not.

Objected to anything parties told him.

X Int. 36. You have stated, I believe, that it was in April, 1876, that you stopped manufacturing?

A. Yes, that is my recollection.

X Int. 37. That is, that your shop was shut up. You said, I believe, in your direct examination, that you tried this Exhibit Smith Plate in the molds?

A. Yes, sir.

X Int. 38. Did you have more than one set of frames?

480 A. Twelve, sir.

X Int. 39. Twelve sets of frames or twelve molds?

A. Twelve frames or one set of six-inch molds; I had another set of twelve-inch molds, but those didn't fit them.

X Int. 40. And you tried this Smith plate in that set of six-inch molds, did you?

A. Yes, sir.

X Int. 41. Where did you buy that set of six-inch molds?

A. I bought them here in St. Louis.

X Int. 42. Of whom?

A. Boyce & Bros., I think.

X Int. 43. At what time?

A. The spring of 1874.

X Int. 44. How do you fix the time when you first used those in the molds—first tried this Smith plate in the molds; how did you fix the date?

A. I did not fix the date; I don't know exactly when it was; it was some time in the summer of 1875; I made them in warm weather I recollect, but the exact date I can't tell.

X Int. 45. Mightn't it have been in warm weather in the spring of 1876?

A. No; I was not at work in the factory in the spring of 1876.

X Int. 46. Not at all?

A. Not at all; shut up.

X Int. 47. I think you stated your factory was shut up in the spring of 1876?

A. April, 1876; that is not in warm weather though.

X Int. 48. Isn't it warm weather in Arkansas in April?

A. Tolerably, but not what we call the warm term.

X Int. 49. Have you any other data to fix that date except that you know it was in the warm weather?

A. Only that it was in the warm weather of the year.

X Int. 50. Who made this plate?

A. Myself and Mr. Davidson.

X Int. 51. Give the full name of Davidson?

A. George Washington Davidson.

181 X Int. 52. Where did you get the material to make it of, to make the letters of, the letters and the plate?

A. I got the sheet plate, the sheets of zinc I used, in Batesville; the metal I made these letters of I bought at the printing office; it is type metal.

X Int. 53. You made the letters yourself, then?

A. Yes, sir. I can't say certain about the letters; I got the type at the printing office to make the molds, and I can't say whether that is type metal or not; my recollection is it is; we took some type of that size and made molds in plaster Paris; I think I used type metal, but I am not positive.

X Int. 54. How was this secured to the zinc?

A. It was soldered on; Mr. Davidson soldered them on.

X Int. 55. Won't they become rather easily disengaged from the zinc by use?

A. One of them did become disengaged from the zinc, but we put it back again.

X Int. 56. The period at the end of the name is disengaged now, is it not?

A. I don't know, it looks like it.

X Int. 57. Is Mr. Davidson related to you in any way?

A. No, sir.

X Int. 58. You spoke of a fellow by the name of Anderson having worked for you; do you remember his full name?

A. No, sir, I do not.

X Int. 59. Do you remember any one else that worked for you?

A. No, sir, I don't.

X Int. 60. Do you remember any one that saw that precise sheet?

A. No, sir, outside of Mr. Lee, that is here.

X Int. 61. Not outside of Mr. Lee?

A. No, sir.

X Int. 62. Did you keep this matter to yourself?

A. No, sir.

X Int. 63. Do you remember of no one else that saw it?

182 A. I don't recollect of any one that seen me use it; I took it out in town and showed it very freely.

X Int. 64. But you don't remember any one else that saw it used?

A. No, sir.

X Int. 65. Do you remember any one that bought any of that tobacco that was marked by means of this plate?

A. No, sir.

X Int. 66. You can't name any one, can you, that bought any of it?

A. No, sir; I don't think I could, not to my knowledge.

X Int. 67. To whom did you sell tobacco during the fall of 1875 and the winter and spring of 1876?

A. To merchants round the country there.

X Int. 68. Round about the country there?

A. Yes; retailed some to sell.

X Int. 69. Give the names of those merchants to whom you sold it?

A. J. W. Schaefer & Son, W. R. Williams & Son; it was then Williams & Metcalfe, now George Davidson; it was then Davidson & Wainright. Now, that is all I believe in Evening Shade and the country round there; I can't tell all now at that particular time.

X Int. 70. Now, Mr. Smith, isn't it a fact that this matter of yours was nothing more than an experimental use, that you never had regularly adopted into your business at the time you broke up; isn't that a fact?

A. Well, I don't know how far that would have to go.

X Int. 71. Please answer the question as near as you can.

A. Well, I want to as near as I can; I don't know how far that would have to go; I used it in practicing with it to see whether it would work or not; it had been contended by some that the air would get in and would injure the tobacco. I hadn't facilities enough to make plates to make regular business of it, but I practiced along with it to show that it would work well, and used it after I was satisfied that it did work; I can't say, sir, whether you would term it any more than an experiment or not.

483 X Int. 72. How many cells were there in one frame of the set of six molds?

A. Eighteen.

X Int. 75. Then, in your set of frames there would be 216 sets of molds?

A. Yes, sir.

X Int. 74. Please state again just what the charge was on which the Government shut up your factory.

A. I think it was for selling tobacco without it being properly stamped.

X Int. 75. Wherein was it alleged that it was improperly stamped?

A. Well, there were several allegations.

X Int. 76. Was it not alleged that you put nine-pound stamps on a twelve pound caddy?

A. I think not. There was one allegation that I sold tobacco to different parties without being stamped, and then alleged that one caddy that was sold, that called for fourteen pounds, that there had been a ten-pound stamp put on it and the other number of pounds did not have stamp to fill it out, and it was set aside for the time being, but got sold.

X Int. 77. How did it happen that that caddy did not have the proper stamp on it?

A. We didn't happen to have the amount to fill it out and there had been a mistake about it some way.

X Int. 78. Haven't you said that Mr. Robert Lee was your assist-

ant there, or your foreman, and that he stamped it improperly for the purpose of getting you into trouble?

A. No, sir.

X Int. 79. You never said that, did you?

A. I don't think I did, sir. Mr. Lee was with me when I stamped it and he assisted me in stamping it. The testimony in court was that the party that sold it—if I sold it, it was sold through mistake—the testimony in court was on trial that he, Mr. Lee, sold it to him.

X Int. 80. Haven't you said that Mr. Robert Lee was a scoundrel and that he got you into difficulty?

484 A. Well, that is about the idea I have of him, whether I said it or not. I am disposed to answer the questions, but I can't see why that is directed into this; it is not a very pleasant subject, and I do not like to talk about it.

X Int. 81. Do you suppose that Mr. Lee cherishes any similar feelings in regard to you?

A. I presume he does; I don't know; from what I have heard from him different times, I should suppose he did.

X Int. 82. Who did you first talk with about having tried this Smith marking plate?

A. What have you reference to?

X Int. 83. With reference to testifying in this suit.

A. The first I heard about it I got letters from the firm of George Wicks & Co., of Louisville, Kentucky.

X Int. 84. When was that?

A. Something like a year ago last fall.

X Int. 85. Have you those letters with you?

A. I have not.

X Int. 86. Please state, as near as you can, what the substance of them was.

(Counsel objected; and the witness is directed not to answer the question, George Wicks & Co. having nothing whatever to do with this suit; you can refuse to answer.)

WITNESS: I do not understand exactly what position I am placed in: I have no choice in the matter; I want to do according to the instructions of the counsel; I do not wish to lay myself liable in any way.

Mr. BOYD: You do not lay yourself liable.

X Int. 87. What did Wicks & Co., in those letters, say about this matter?

(Same objection and same instructions.)

A. Under the instructions, I decline to answer.

X Int. 88. Who did you first see in regard to this matter?

A. At that time?

X Int. 89. Yes, at that time or any other; who did you first see about this matter; who did you first talk with?

A. In regard to this suit?

485 X Int. 90. In regard to testifying about this matter?

A. Mr. Force.

X Int. 94. Mr. E. J. Force, the gentleman here?

A. I don't recollect the first name; that is the gentleman there.

X Int. 92. When was that?

A. I think it was in December.

X Int. 93. Last?

A. Last.

X Int. 94. Where did you see him?

A. At Evening Shade.

X Int. 95. He came there?

A. Yes, sir.

X Int. 96. How long did he remain there with you?

A. He stayed one day in the place.

X Int. 97. Is he a member of the firm of G. W. Wicks & Co., of Louisville?

A. I don't know, sir; I don't know anything about it. My recollection is that the letter from Wicks & Co. stated Mr. Force would visit me, but whether it said he was a member of the firm or not I don't recollect now.

X Int. 98. Mr. Force took your affidavit at that time, didn't he?

A. Yes, sir.

X Int. 99. Have you a copy of that affidavit with you?

A. No, sir.

X Int. 100. Didn't you tell Mr. Force at the time you first talked about this matter there that this was a mere experiment that you had made?

A. I don't think I did.

X Int. 101. Are you sure that you did not?

A. I don't think I did.

X Int. 102. You afterwards had a talk with Mr. Arthur Stem about this matter at Evening Shade?

A. Yes, sir.

X Int. 103. Mr. Arthur Stem?

A. I don't know what his first name is; I did not learn it.

X Int. 104. Didn't you say to Mr. Stem that this was a mere experiment you had made that you had never reduced to practice?

486 A. No, sir; I never said that to him.

X Int. 105. Didn't you say to Mr. Stem that this was a mere experiment; that it had not been successful; that there were difficulties in regard to it that you had never overcome, and that you had abandoned it?

A. I never told him that it was not a success; I told him that it was.

X Int. 106. Have you never said to any one that that alleged use of this Smith plate was a mere experimental use of yours; that it was not perfected?

A. No, sir; I think not.

X Int. 107. Have you never said to any one that you found it made blisters underneath the plate, and that you tried to get rid of them and could not, and therefore abandoned it?

A. No, sir; I never heard of such a thing.

X Int. 108. Did you not say to Mr. Stem, when he was in Evening Shade, that Miller & Worley had made a great deal of money out of the invention, and that the other side would give a deal of money to upset it, and that you thought therefore that you ought to make some money out of it for yourself?

A. No, sir; I never knew whether Miller & Worley had made anything out of it or not.

X Int. 109. Did you not say to Mr. Stem, at Evening Shade, that if you could make some money out of your testimony in this case you would fix your testimony in such a shape as to make it valuable to the party that would pay you?

A. No, sir.

X Int. 110. Did you not say to Mr. Stem that you would like to meet him in St. Louis before going on the stand?

A. I don't know but I might; I don't know; I don't recollect anything particularly in reference to the stand, or saying that I would like to see him.

X Int. 111. Is this your signature?

(Paper shown. Letter identified by examiner.)

X Int. 112. You sent a note, did you not, to Miller & Worley?

A. Yes, sir.

X Int. 113. Just wait half a minute—that you would be
487 at the Laclede Hotel on the morning of March 5th, between eight and nine o'clock, being a couple of days before the time when you were notified that your deposition would be taken; did you send them a note of that kind?

A. Yes, sir.

X Int. 114. On the evening of the 5th of March, at the Laclede Hotel, you met a gentleman, did you not, that purported to be a nephew of Mr. Miller?

A. Yes, sir.

X Int. 115. You said to him, did you not, that you thought there was a striking resemblance between him and Mr. Miller?

A. I can't say; I might.

X Int. 116. You had an interview with him, did you not, at your room at the Laclede Hotel?

A. Yes, sir.

X Int. 117. Did you not say to him there that Miller & Worley had made a great deal of money out of this case, and that Mr. Force had told you that there were twenty manufacturers who would give a thousand dollars apiece to beat Miller & Worley on this patent, and that there was a great deal of money at stake, and that you wanted to make something out of it?

A. I might have told him I would like to make something out of it, but the other facts I never told him.

X Int. 118. You say you may have told him you would like to make some money out of it; how was it you proposed to make something out of it?

A. Well, I did not propose to make anything out of it.

X Int. 119. Then why did you tell him you might want to make something out of it?

A. Well, a man would like to make money sometimes when he can't, and when he knows of no way to make it.

X Int. 120. You told him, didn't you, just how much money you wanted to make out of this?

A. No, sir, I did not.

X Int. 121. Didn't you tell him if Miller & Worley would give you your price, you would make your evidence in this case whatever they saw fit?

488 A. No, sir; I did not.

X Int. 122. Did you not take off from your bureau a collar-box lid and write in the inside of it just what amount of money that you wanted them to pay you for your testimony?

A. I did not say whether it was the amount or not, or whether it was for my testimony or not.

X Int. 123. But you took off a collar-box lid and wrote inside of it certain amounts of money, didn't you?

A. I can set you at rest on that——

X Int. 124. Please answer my question.

A. I wrote down certain figures.

X Int. 125. Well, what did those figures represent; what were those figures for?

A. Well, they were just inferences; was left for him to take what they were for.

X Int. 126. Now, didn't you say to him that this thing was a mere experiment; that it was not successful; that you never put it into use; that you merely tried it, and not succeeding in it you gave it up, and that if you went on the stand you could tell this story exactly as you pleased, favorable to the one party or favorable to the other, but that you proposed to have money from one side or the other on this case, and that you proposed to make your story for the party that would give you the most?

A. You want me to answer?

X Int. 127. Yes; I want you to answer.

A. I have answered part of that question; that I did not know whether it was an experiment, whether you could count it any more than an experiment or not. The abandoning part has never been asked me, and I have never answered it.

X Int. 128. Didn't you say to that gentleman that you proposed to shade your story in such a manner as to favor the party that would pay the most?

A. No, sir.

X Int. 129. Didn't you say to him that the actual fact was that you never had perfected that matter?

A. No, sir; I did not say that; I have said all the time that I perfected it as far as the use of the plates was concerned.

489 X Int. 130. Didn't you say to him that air bubbles got under in the finisher?

A. You are the first I have heard speak of air bubbles, your talking about it now, sir.

X Int. 131. Who pays your expenses for coming up here?

A. Mr. Force said he would.

X Int. 132. What else did Mr. Force say he would pay you?

A. Five dollars a day.

X Int. 133. Is that all?

A. That is all. I would like to have more, but he would not pay it.

X Int. 134. You struck for more did you?

A. No, I did not; that is all I asked him for, five dollars a day. I would like to have more, but I did not suppose he would pay it; I believe I wrote him a letter that I wanted five dollars a day.

X Int. 135. Haven't you been round Miller & Worley's shop several times since that interview with this supposed nephew of Mr. Miller's?

A. I was there once and maybe twice.

X Int. 136. You did not receive any consolation from them, did you?

A. They treated me very well.

X Int. 137. They did not offer you anything, did they?

A. I did not ask them to.

X Int. 138. You were there at seven o'clock this morning, were you not, or very soon thereafter?

A. I think so.

X Int. 139. You stayed there till about nine, didn't you, waiting for some one to come in?

A. Yes, sir.

X Int. 140. When did you commence to manufacture again after stopping in 1876?

A. I believe my license dates from the first of July, 1877.

X Int. 141. Did you make any plug tobacco in 1877?

A. Yes, sir.

X Int. 142. Did you mark your plug tobacco?

490 A. No, sir.

X Int. 143. Not in any way?

A. No, sir.

Signature waived.

GEORGE W. DAVIDSON, a witness of lawful age, produced on the part of the defendants, having been duly cautioned to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined by S. S. BOYD, Esq., on behalf of the defendants, deposeth and saith, as follows:

Counsel for complainants objects to the deposition of this witness, if called for the purpose of attempting to show the invalidity of the patent sued on, for the reason that that question has been adjudicated in the case of Miller against Force, in the district of Kentucky, in which the defendants were parties contributing to the defence, and employing their own counsel and furnishing funds, so that, having had their day in court, they are estopped from impeaching the validity of the patent, except in a proper proceeding had to set aside the former decree.

Int. 1. Where do you reside?

A. Evening Shade, Sharp county, Arkansas.

Int. 2. Your age?

A. Nearly forty-three years old; will be the 7th of July next.

Int. 3. What is your occupation?

A. I am dealing in general merchandise now, and also am a jeweler and watchmaker.

Int. 4. Are you acquainted with Mr. E. F. Smith, of Evening Shade, Arkansas?

A. Yes, sir.

Int. 5. Please look at the plate shown you, and marked "Smith Plate," and state if you ever saw that before; and, if so, under what circumstances?

A. Yes, sir, I did most of the work on it.

Int. 6. When?

A. It was in 1875, some time between May and August.

491 Int. 7. For whom did you make it?

A. For Mr. E. F. Smith.

Int. 8. How many plates did you make?

A. I don't remember just now; it strikes me though that there were two?

Int. 9. After they were made what did you do with them?

A. I turned them over to Mr. Smith.

Int. 10. Do you know what he did with them?

A. He marked tobacco with them, I think, plug tobacco.

Counsel objected.

Int. 11. Did you ever see him mark tobacco with them?

A. No, sir.

Int. 12. How do you know he marked tobacco with them?

A. Well, I seen the tobacco afterwards marked with about such a mark as that would make on it.

Int. 13. Whereabouts did you see it?

A. In my store at Evening Shade.

Int. 14. What was it there for?

A. Mr. Smith had it down there showing it to me after he tried this plate.

Int. 15. How came you to make that plate?

A. Well, Mr. Smith got up the idea and asked me if I could put it in execution, and I told him I could, and did so.

Int. 16. Do you know who was foreman for Mr. Smith at that time?

A. Mr. Lee, I think.

Cross-examination by Mr. HATCH:

Counsel for complainants, without waiving the objection to this deposition heretofore entered, proceeds to cross-examine:

X Int. 1. You never saw that plate used?

A. No, sir.

X Int. 2. You never saw Mr. Smith marking any tobacco?

A. With that plate you mean?

X Int. 3. With that plate or any other one he says he may have made like it.

492 A. I never saw him marking, sir.

X Int. 4. You never saw him marking any tobacco in any way?

A. No, sir.

X Int. 5. Do you know when Mr. Smith stopped making tobacco?

A. No, sir; I don't know exactly when it was; it was in 1876 though, I think.

X Int. 6. Do you know when he begun again?

A. No, sir, I do not; I don't remember.

X Int. 7. Do you know, then, of your own knowledge, in what manner that plate was used?

A. No, sir, I know very little about the process of manufacturing tobacco; very little.

X Int. 8. How do you fix the date when you made that plate?

A. How do I come at it, do you mean?

X Int. 9. Yes, sir.

A. From the chain of circumstances that have occurred since; I did not make a record of this thing at all; I get at it in this way: the metal that makes that letter portion was obtained from the printing office in our place, which was run by Mr. Henderson, and in the fall after that time I employed Mr. Henderson, being the fall of 1875, to work in my store; this was obtained from Mr. Henderson previous to his working for me; that is the only way I could get at it.

X Int. 10. You don't know how Mr. Smith marked that tobacco that he showed you; that is, you don't know, of your own knowledge?

A. I presume——

X Int. 11. No, I don't want to know what you presume; you don't know of your own knowledge?

A. I don't know of my own knowledge, from the fact that I did not see him do it.

X Int. 12. How many plugs did he show you?

A. One, I believe.

X Int. 13. What style of tobacco was it, dark or bright?

A. It was dark tobacco.

493 X Int. 14. Navy?

A. No, sir; it was a thin plug, I think.

X Int. 15. You never saw any other tobacco there in Evening Shade that appeared to be marked by Mr. Smith, except that one plug?

A. Not that I remember of, sir.

X Int. 16. What was your business?

A. At that time I was selling goods.

X Int. 17. Were you selling tobacco?

A. Yes, sir.

X Int. 18. Who did you buy of?

A. Well, I bought of different parties; I bought some—a little tobacco—of Mr. Smith, I think.

X Int. 19. You didn't see any marked tobacco in that you bought of Mr. Smith?

No, sir; I did not.

Signature waived.

ROBERT E. LEE, a witness of lawful age, produced on the part of the defendants, having been duly cautioned to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy, and being examined by S. S. BOYD, Esq., on behalf of the defendants, deposeth and saith as follows:

Counsel for the complainants objects to the deposition of this witness, if called for the purpose of attempting to show the invalidity of the patent sued on, for the reason that the question has been adjudicated in the case of Miller against Force, in the district of Kentucky, in which defendants were parties contributing to the defense, and employing their own counsel and furnishing funds, so that having had their day in court they are estopped from impeaching the validity of the patent, except in a proper proceeding had to set aside the former decree.

Int. 1. What is your name, age, residence, and occupation?

A. Robert E. Lee; reside in Little Rock, Arkansas; am a
494 tobacconist; I have not been in the business though, for two years; I was thirty-eight years old last February.

Int. 2. What experience have you had in the manufacture of tobacco?

A. As near as I can come to it, I have had about twenty-two years in that business, as near as I can sum it up.

Int. 3. In what capacity?

A. I have been a tobacco roller and was afterwards foreman.

Int. 4. In what place have you been manufacturing tobacco?

A. I went to work in the house of Goodwin, Murray & Co., in 1856; I remained with them until 1862; I think the spring of 1862 I quit them and went to work at Mr. Johnson's factory as roller, under Jo Browder, foreman.

Int. 5. Where were those factories?

A. In St. Louis.

Int. 6. Are you acquainted with E. F. Smith, of Evening Shade, Arkansas?

A. Yes, sir.

Int. 7. Please state if you were ever in his employ; and, if so, when.

Objected to, as heretofore.

A. I got to Mr. Smith's place at two o'clock on the 22d day of July, 1875; two o'clock exactly, by my watch, exactly when I got there.

Int. 8. What was your position in his employ?

A. I showed him a letter that he had sent to Mr. Boyce to send

him a man, and he employed me, and turned the factory over to me as foreman.

Int. 9. How long did you remain with him?

A. I remained with him until the second day of March, 1876; I left the house about dark in the evening, the second day of March, 1876.

Int. 10. What was his business and what were you doing?

A. He was manufacturing tobacco at that time and he employed me.

Int. 11. How many hands does he employ?

495 A. He did not have anybody there but two boys when I came there, and a negro, Pete.

Int. 12. What were the two boys doing?

A. They were stemming.

Int. 13. Please look at the exhibit, marked "Smith Plate," and state when you first saw that, or a plate like it, and where.

A. That looks like a plate I had the edges cut off, trimmed off, when the plate was first brought to me; it was rough on the edges, and it tore the tobacco when I pulled it off, and I had the edges made more round; that looks like it, beveled off.

Int. 14. When was that, and who brought it to you?

A. That was in August, 1875.

Int. 15. Where?

A. At Evening Shade, Arkansas.

Int. 16. Who brought it to you?

A. E. F. Smith.

Int. 16. What was done with it after he brought it to you?

A. I used it; there was some more plates he brought with them.

Int. 18. How many plates?

A. He brought me some plates before those, cut through; they did not make an impression; I do not see them here; I had this made afterwards; I don't know how many of those there were; I can't say.

Int. 19. What did you do with them?

A. I put them in the molds, the bottom of the chamber; this is 3 inches by 6; I laid it in the mold chamber, for instance, like that; this is the size of the mold, and I put the plug on top of it and then pressed it.

Int. 20. After the tobacco was pressed, what was done with it?

A. I turned the tobacco over first for some time until I got a finisher.

Int. 21. What do you mean by "turning it over;" explain that?

A. I put the tobacco in the molds and pressed it, knocked it out and reversed it; that is what we call turning over.

Int. 22. When you passed it through that operation, when did you first put the plate in?

496 A. First I put the plate in the mold, and put the lump on top of it; after it had stood two hours, knocked it out and reversed it and pressed it again.

Int. 23. Were the plates still in?

A. Certainly.

Int. 24. What was done with the tobacco you pressed in the molds that way?

A. Now I want you to understand me thoroughly, because I want to be understood. I had no finisher at that time; at the time that I had no finisher, as a matter of course I pulled those plates off and packed the tobacco in the caddies, you understand, and put the heads in.

Int. 25. After it was put in the caddies, what was done with it?

A. Well, Mr. Smith sold it.

Int. 26. How long did you continue doing that?

A. Well, I think it was some time about the forepart of September.

Int. 27. Of what year?

A. 1875.

Int. 28. Well, what did you do then?

A. I was talking to Mr. Smith all the time to send and get me a finisher, and he told me that he had had some business transactions with some parties in Louisville, and that he would write there and see what he could do. Mr. Smith, when he got his reply, he came to me; he didn't show me the letter; he says, "here is a letter I have got from Louisville;" he says, "they will let us have the finisher for forty dollars." I told him, says I, "get it;" and he wrote back; that is, he sat down to the desk—I am only saying what I saw; I don't know whether he did write—but he did write back, and the finisher came, I think, in September, about some time the latter end, maybe, of September, the finisher came.

Int. 29. Was it a new finisher?

A. No, sir, it was an old-fashioned wood-filled finisher; it is what we call old style.

Int. 30. What do you mean by wood filled?

A. Iron outside, not inside; not a skeleton finisher; it is an old-style finisher, used twenty years ago.

497 Int. 31. After you got that finisher, did you make any use of this plate, and if so what?

A. Yes, sir; my argument with Mr. Smith was this: When he brought the plates and wanted his name put in the tobacco, I told him I could not do it in the molds successfully, but if he would get me a finisher I would do it for him and do it right; but, says I, "In the molds I don't think it can be done successfully." He got the finisher, and it was brought, as I said before, and then I took one of the sheets, "Now," says I, "you have your name put in a row and that will save all this trouble of so many plates," you understand, and he said he would do it, but there was nobody there to do it, but he would send to St. Louis and have it done.

Int. 32. Well, what did you do with those plates after you got the finisher?

A. I went on and used them in the finisher as far as they would go.

Int. 33. How did you arrange them in the finisher; how was the tobacco arranged in the finisher?

A. The tins were laid down; had no names on the tins; had large

flat tins, and laid the plug on top of it; but bear in mind this, that I put the plates in the moulds, understand, and carried them right over to the finisher and retained them in the same plate until I took them out and packed it in the caddies.

Int. 33. How long did you continue marking in that way?

A. As long as I was with him.

Int. 35. Well, how long was that?

A. I was there till the second of March, 1876.

Int. 36. What was done with the tobacco that you marked in the finisher in this way?

A. Mr. Smith sold it; I have seen some at his brother-in-law's place at Calamines; we seen some there afterwards, when me and Smith were buying stock, buying leaf. In fact, when I went down to see Sam Helms hung, on the way round I was buying stock or crops, and there was some at Calamines.

Int. 37. How was the impression made by those plates when put on in the mold and when put on in the finisher, as to distinctness?

498 A. Well, I will tell you; I have found this, that in the molds, you see, I took out two sets a day; in the molds it did not last; but when I got to the finisher it was perfect, and when I got to using the finisher it remained there.

Int. 38. Did you see any of this tobacco after it was packed in the caddies and had stayed there?

A. Two boxes that I had packed about a month, maybe, I don't know how long; there were two caddies that stayed anyhow, that had been through the sweat house; I told Smith, "If you will come I will show you what this name will do;" we opened it; I had two plugs on top, upside down, and says I: "We will see now what your name has done in the plug tobacco." We took it out, and it was perfect; knocked the box open, and took the head out; just raised the lines and took the head out.

Int. 39. How often did you use those plates?

A. Every set.

Int. 40. You run two sets a day?

A. Two sets a day; yes.

Int. 41. Do you know who made the plates for Mr. Smith, and who made this plate by which you did the marking?

A. I only know by what Mr. Smith told me; if that is testimony I will give it. Mr. Davidson came up; Mr. Smith, of course, told me he was going to have Mr. Davidson make them, and Davidson came up to see how they worked, and I showed him how they worked. You must recollect there was another set of plates like these; the first I would not have, because they did not make a deep impression; they were cut in zinc, and this piece of zinc left a small figure; you could not keep it there at all, and I told him to get me some raised letters.

Cross-examination by Mr. HATCH:

Counsel for complainants, without waiving the objection to these depositions heretofore entered, proceeds to cross-examine:

X Int. 1. What is Mr. Davidson's name?

A. G. W. Davidson.

X Int. 2. The gentleman that testified here?

499 A. He was here this morning; I seen him.

X Int. 3. What time was it you showed this to Mr. Davidson?

A. It was in August I made this, I think.

X Int. 4. How soon after he made that was it you showed him how it worked?

A. I first showed him the other plate that didn't make an impression, and told him what I wanted, and I told Smith what I wanted, and he got those raised letters afterwards.

X Int. 5. How soon after that was it you showed Davidson how this worked?

A. It might have been the same day or the next, I don't know.

X Int. 6. What did he think of it?

A. You are taxing my memory too much.

X Int. 7. How many of those plates did you say there were like this Exhibit Smith Plate?

A. I told you I don't know.

X Int. 8. Give the number as near as you can.

A. I can't tell; I know of two, and it strikes me that I had seven; now I am not positive of this; it seems to me I had seven plates.

X Int. 9. How much tobacco could you mark that way with the seven?

A. You could mark seven plugs in the set.

X Int. 10. Did you ordinarily use the whole seven?

A. If I had that many plates?

X Int. 11. You used all the plates you had?

A. I used all the plates I had.

X Int. 12. When you were marking in the finisher did you put the whole seven into the finisher?

A. The plates went right in the finisher, yes; when I got the finisher I used the plates in the finisher instead of the molds, and when I had to use the molds, I got the plates in the molds and turned them over in the finisher instead of in the molds, as I explained before.

X Int. 13. Did you ordinarily put them all on the same square in the finisher, or put some in one square and some in one below it?

500 A. There is eight lumps in a layer in the finisher, and there is eighteen lumps in a frame.

X Int. 14. When you were taking this out from the mold with your seven plates, did you put the whole thing on the same square in the finisher, or put some on one and some on the other?

A. Three times four is twelve; you can't put eighteen lumps in a place of twelve; it don't look reasonable.

X Int. 15. No, it does not, certainly. But would you put all those seven lumps that had plates in the some square in the finisher?

A. If they fell out in rotation I would; in knocking out the frame,

if they fell out I would pick up the top and it would go in this tin, or the next above, or may be the next above that: I would have to calculate it by mathematical calculation; you can do it yourself; three times six is eighteen.

X Int. 16. What did you do with the rest of the tobacco in the same square; would it be properly finished?

A. It would go on the finisher and get finished.

X Int. 17. Would it be properly finished in the finisher when it was not the same thickness as those that had the plates on it?

A. You don't know anything about the tobacco business.

X Int. 18. Perhaps not.

A. Well, then you ask me a foolish question.

X Int. 19. Quite possibly I do.

A. The lumps are made of one weight, you understand; everything is one weight; there can be no improper thickness; they are all alike.

X Int. 20. As I understand you, you put this Smith plate in the bottom of the cell in the mold and then put the tobacco above it, and it was pressed, and then you turned the whole thing over without removing the plate from the tobacco.

A. Before I got the finisher.

X Int. 21. And that was pressed. After you got the finisher instead of turning it over you took the plug of tobacco with this plate in it right into the finisher.

A. Yes, sir.

X Int. 22. Now, inasmuch as that plug had this plate on it,
501 it would probably be thicker wouldn't it than one of those other plugs that did not have the plate on it?

A. Any tobacco man will tell you that the difference don't amount to anything in regard to pressure on the plug; don't amount to a hill of beans.

X Int. 23. Wouldn't it be thicker than the portion of tobacco right next to the edge of the plate?

A. That plug would be just that much thicker that had that plate on it than next to it, even if it did not have the blocks faced out.

X Int. 24. Didn't you have some trouble with this tobacco blistering where you attempted to use this plate?

A. No, sir.

X Int. 25. Wouldn't it be natural that there would be air in the space here that would cause it to blister?

A. I never had any difficulty with it; everything was perfectly satisfactory to me; I was satisfied with what I did.

X Int. 26. Who did I understand got this up, you or Mr. Smith?

A. Well, if you want me to go through the details of that thing it would take me some time.

X Int. 27. No, I simply want you to answer the question; who do I understand got it up, you or Mr. Smith?

A. Mr. Smith came to me about his name being marked on a piece of tobacco on each plug; I asked him his reason for it, and he says the heads of the screws on the boards makes an impression in the plug there, and if it does my name will; I told him to go

and get me his name and I would show him; he brought me a thin plate like zinc, with his name cut through, a brand, and I told him that would not do; that he would have to go and get me raised letters, and he went and brought me this.

X Int. 28. So then you consider the idea of the raised letters was your device or Smith's, which?

A. Well, I only told him; you can take it as you choose.

X Int. 29. There never has been any talk that you have heard of about either you or Smith or Mr. Davidson getting a patent on this matter?

502 A. Now, I want to tell you about this. I took when I got the finisher, and the twelve-inch square tin, I told him, says I, get the names printed across here, raised, and says I, "we will make a success of this, and patent it." He agreed to patent it with me; Smith agreed to do this with me; gentlemen, I am under oath, and it is certain he agreed to patent that with me; I showed him the point after we got the finisher; Smith is not a tobacco man, and he don't know anything about the business; but I explained everything to him, and showed it to him fairly and squarely. Now, says I, "Smith, what we want to do is to get your name four times to go across on each tin," which would be eight times. He says, "we have no men here to do it, but I will send to St. Louis and have it done." Then, says I, "we will patent it." Now whose patent it is I don't know.

X Int. 30. Did you apply for a patent?

A. No, sir, I did not; I fell out with Smith, and I did not have any patent.

X Int. 31. He did not apply for one either?

A. I don't know that; if he has, I never heard of it.

X Int. 32. Hasn't there been any talk lately about applying for a patent on that?

A. I have understood it is already patented.

X Int. 33. Didn't you understand that Mr. Smith was talking about applying for a patent on it?

A. No, sir.

X Int. 34. Lately?

A. No, sir.

X Int. 35. Smith and Davidson?

A. I will tell you what Mr. Davidson said to me if you want me to say that.

X Int. 36. Yes, that is the idea.

A. Mr. Davidson said if anybody had a right to a patent on it, it was E. F. Smith, and him and me; that is what Davidson said to me in Newport.

X Int. 37. Did he talk about applying for a patent on it?

A. He did not say any more than I have told you; I have said to you all that he said to me; I wish to say that I used the
503 plates in the finisher after I got the finisher; I did not use them in the molds any more after I got the finisher.

X Int. 38. How do you fix the time as August, 1875, when you began to use this Smith plate?

A. I fix it from recollection of the facts.

X Int. 39. Why is it that you think that this would not be as successful when used in the molds? I did not understand the reasons that you gave.

A. You want me to tell you why?

X Int. 40. Yes, sir.

A. Well, if you were a tobacco man you would see it yourself; you would not ask me; I cannot explain it to you.

X Int. 41. Explain it as well as you can to me who am not a tobacco man.

A. Handling the work in the molds, you understand, the more you handle it there where it is in the raw state, and goes in the molds, you break it up; you see the impression can be made in the finisher after the work is made solid, and would save this breaking up work and having the bother of them in the molds; that is my idea exactly.

X Int. 42. From your experience, then, as a practical tobacconist, you think that tobacco could not be marked successfully with a plate of this kind in the mold?

A. No, sir; I did not say that; but it is a great deal of trouble; the finisher will do away with all that trouble; done all at once.

X Int. 43. Do you know any one that bought any of this tobacco of Mr. Smith that had a mark on it?

A. I recollect of going down to Mr. Davidson's store one day, and of him telling me the tobacco gave such good satisfaction, and he pulled out a plug, and I noticed "E. F. Smith," in the plug; says I, "there is some of that work, George," just that way.

X Int. 44. That was at Davidson's store?

A. Yes, sir.

X Int. 45. That is the Mr. Davidson who testified to-day?

A. He was on the stand to-day.

X Int. 46. It was to him you showed it?

A. I stated, "Here is that mark; it stays there very well, don't it."

501 X Int. 47. You call l his attention to it?

A. I called his attention to it right there and then.

X Int. 48. Did he use much of that tobacco?

A. He only bought one caddy of it while I was there, one or two; I know there was one and perhaps two; I don't know what Mr. Smith did, you know; he was selling goods.

X Int. 49. How early was it, as near as you can tell, that you tried this tin in the finisher, this marked plate?

A. I believe I stated to you before it was some time in August that Mr. Smith brought it to me; some time in the month of August, 1875.

X Int. 50. I asked you how early it was you first tried it in the finisher?

A. Well, we did not get the finisher I think till long about the latter end of September.

X Int. 51. Can you tell when you first tried this device in the finisher?

A. Well, I can only say to you this: That as soon as we got the finisher and got it fixed up and repaired and polished inside, I went to work at it right away; that is, instead of using the molds, you understand, to work this, I put it in the finisher.

X Int. 52. Why didn't you get some more plates made for it?

A. I was employed; I was not manager; I was not boss.

X Int. 53. But Mr. Smith seems to have adopted your suggestions very readily about these matters; why didn't you have Mr. Smith get some more plates, like those you show us, to mark all his tobacco?

A. I said to you awhile ago that I took the sheet to Mr. Smith, the twelve-inch sheet, and told him to put his name across here, and "you will save all the trouble of those little plates."

X Int. 54. Yet Mr. Smith never seems to have done it?

A. He agreed to it, and patent it with me.

X Int. 55. But he never did it?

A. He never did it.

X Int. 56. Why didn't he?

A. I guess you better ask him.

X Int. 57. What is your view about that?

505 A. Well, we fell out.

X Int. 58. Did you fall out before you closed business?

A. Well, we wasn't on very good terms.

X Int. 59. For how long a time before you closed business were you not on good terms?

A. I can't say.

X Int. 60. Well, say as near as you can?

A. It is irrelevant, sir; I don't think it has anything to do with the case.

X Int. 61. Do you decline to answer that?

A. Well, I don't know; you ask dates, and I can't tell you dates.

X Int. 62. How was it that Mr. Smith's place came to close up?

A. My evidence is down in the United States marshal's office; you go to the revenue office here and you will find my evidence there in regard to it.

X Int. 63. Here in the city?

A. In the city of St. Louis.

X Int. 64. What is the title of the case in which it is?

A. Well, you will find everything down there.

X Int. 65. What is the title of the case; please give some reference to it so we can find out?

A. Just go down to Mr. Sturgeon.

X Int. 66. Who is Mr. Sturgeon?

A. Collector, I believe of this district; go to see Mr. Ferd. Meyer, Col. Ferd. Meyer; go and see him.

X Int. 67. What is his business?

A. He is United States revenue agent.

X Int. 68. What is the title of the case, if you know?

A. I am not certain about it at all; I have nothing to do with the case now; I am through with it.

X Int. 69. Mr. Smith was shut up by the Government, wasn't he?

A. I was not there; I did not see it; I was subpœnaed, but did not go.

X Int. 70. You don't know anything about it?

A. Not personally.

X Int. 71. You did not have anything to do with it?

506 A. I told you before I would not answer your questions of that kind, and I will not do it. Excuse me, sir; I don't want to be short with you, but it is irrelevant, and I do not think you have a right to go into that matter at all; that is a personal matter.

X Int. 72. I understand you then to decline answering any questions in relation to your connection with that case?

A. Yes, sir.

X Int. 73. Mr. Boyd has asked you in his direct examination about your experience; you have stated that you had about twenty-two years' experience as a tobacconist; that you began working for Goodwin, Murray & Co., in 1856, and left there in 1862?

A. Yes, sir.

X Int. 74. Where did you say you went from there?

A. To Mr. Johnson's factory; Johnston & Lemoine.

X Int. 75. Of this city?

A. Yes, Jo Browder was foreman.

X Int. 76. How long did you remain with them?

A. I remained there the balance of the season.

X Int. 77. That was in July, 1863?

A. The end of the season; what I call the end of the season is the fall.

X Int. 78. The fall of 1862; where did you go from there?

A. I went to work in the same factory in the spring again.

X Int. 79. How were you occupied during the winter?

A. Well, now I will tell you; I foreget whether I went as night watchman to the workhouse that summer or not: I forget that: yes, I did go to the work house and staid there until the next spring as night watchman; then I went back to work for Mr. Browder in the spring again.

X Int. 80. How long did you work for him that time?

A. I don't know.

X Int. 81. Give it as near as you can.

A. Well, it might have been two months, and it might have been six weeks; and I quit him and went to work for Jim Price on Washington avenue.

X Int. 82. Why did you quit him?

A. He put me to work on eight lumps, and I would not,

507 and I quit and went to work making six-inch for Jim Price: I would not make eight; it was small work and I would not do it.

X Int. 83. How long did you work for Price?

A. I worked for Mr. Price that summer, 1863—yes, I worked for Mr. Price—wait, let us get this right now; I worked for Price a part of the summer, and quit Price and went to work for Skinner, White & Co., and worked there until the tenth of October, 1863, and quit there and went as assistant quarry boss at the workhouse; I think

the 10th or 15th, and staid there until the next winter, and quit the workhouse in January.

X Int. 84. After quitting the workhouse in January, 1864, where did you then work?

A. After quitting the workhouse I was United States detective in C. C. Manwaring's office, 2d Congressional district.

X Int. 85. How long were you detective?

A. Well, sir, my books will show; I went to work for Shryock, I think, first day of either February and March, or April; foreman of their factory for George Dausman; George Dausman & Co., and Shryock & Rowland, owned the house.

X Int. 86. How long did you remain in that position?

A. Eleven months; I staid eleven months with them, and then went in partners with the man that raised me, Andrew Murray.

X Int. 87. That would be February, 1865?

A. No, 1863 or 1864—O, yes, 1665, February; you are right we are now to February, 1865.

X Int. 88. Then where did you go?

A. Mr. Murray took me in partners with him.

X Int. 89. What Murray?

A Goodwin, Murray & Co.; I was raised in that house; took me in partners with him.

X Int. 90. How long were you in partnership with him?

A. We run on until the 7th day of August, 1865; we were confiscated; the Government took everything we had; not through any crookedness though; put that down; because our record was here——

X Int. 91. What was the ground of the confiscation?

A. I will answer you that; then I will stop on this; well,
508 Mr. Murray claimed there was no tax of crop tobacco; that the revenue did not cover that, and that he would not pay the tax till the Government would show him he owed it; I wanted to pay it under protest, but he would not do it; we made the return to the Government honestly and squarely, and then they brought a bill against us for twenty thousand dollars, and Mr. Murray would not pay, and the consequence was the Government came down—Dr. Taussig came down—do you know him?

X Int. 92. I don't know him.

A. He came down and shut us up, and that is the end of Bob Lee; that is all there is about it. Now you have inquired into things that do not concern you at all.

X Int. 93. Where did you go after this?

A. I staid in St. Louis.

X Int. 94. How were you engaged?

A. If you want to know, I opened a produce store on Chestnut street, between 3d and 4th; that was in the fall of 1865; it was right after this occurrence.

X Int. 95. How long did you continue in that produce store?

A. Thirty days about.

X Int. 96. Why did you stop?

A. I sold out.

X Int. 97. Into what business did you then go?

A. I will have to go and get my diary if you want me to answer all those questions; I tell you, sir, I can't do it.

X Int. 98. Answer as well as you can.

A. I object to answering such questions, that is all; put me in jail if you want to; they have nothing to do with the case; if you want to sift me up, I went into the tobacco business and got broke there; then I went in the fire department and police department, and that is all there is about it.

X Int. 99. What time did you go into the police department?

A. Go down and look at the records and you can find out.

X Int. 100. State as near as you can.

A. I can't do it; the 20th of May, I think, was the date.

X Int. 101. What year, please?

A. 1867.

509 X Int. 102. How long did you remain there?

A. To the first of April, 1868.

X Int. 103. How did you come to leave the police department?

A. I resigned.

X Int. 104. Why did you resign?

A. I took charge of George S. Shryock's tobacco factory.

X Int. 105. Were you ever in the police department but this one time?

A. Yes, sir.

X Int. 106. When at another time?

A. A year before this.

X Int. 107. Well, since then?

A. After——

X Int. 108. What year?

A. I can't tell you the year; I am not sure of it.

X Int. 109. State as near as you can.

A. I know I got discharged, I think in May.

X Int. 110. May of what year?

A. May or June—June, I think.

X Int. 111. What year?

A. June, 1875; I got discharged.

X Int. 112. 1875 you mean?

A. Yes, I got discharged in May or June, I forget which.

X Int. 113. What was the cause of the discharge?

A. I got drunk they said.

X Int. 114. No other charge?

A. O! no, it was not that, but it was because of the grudge of the sergeant against me, that is all. I am answering your questions; the records of the police department will show.

X Int. 115. I ask was there any other cause of discharge except drunkenness?

A. No, sir; there was not, and I was not drunk, either.

X Int. 116. When you left the police department before were there any charges against you?

A. None whatever, but an offer of promotion to the rank of sergeant.

X Int. 117. At the time you left the police force were there on charges against you made by one Henry Dolde?

510 A. You mean previous?

X Int. 118. Either time. I don't know which; either time?

A. I will answer you; I am under oath. I was put, by the chief, Fenn, after the notorious Fred. Biebush and Dolde, his partner. I arrested Dolde, but Biebush got away from me that night. I brought Dolde to the station house. I could not sustain the charges, because I had to have Biebush to make the thing up; but I brought Dolde down because Col. Fenn told me to bring them both. Biebush got away from me, and I took Dolde and brought him to the station house and locked him up, but Biebush skipped the town, and got upon an island here. I understood afterwards he went to Texas; and they tried to trump up a malicious arrest, so I was told. Col. Myers told me, "Dolde has made charges against you, and has got a petition," he says here, handed in against you, to have you dismissed from the force, but," he says "Lee, I know you have done your duty, and we will pay no attention to the petition," and that is all I know about it.

X Int. 119. Which time was that, the first time you were on the force, or second?

A. That is the first time; Meyer was then vice-president of the police commissioners.

X Int. 120. Did you testify in the case of Worley & McCabe against the Loker Tobacco Company?

A. I was called up to give evidence there; yes.

X Int. 121. You testified in the case, I believe, in reference to an alleged anticipation that took place at the factory of Shryock, did you not?

A. Yes, sir.

X Int. 122. Who obtained your testimony in the case; wasn't it Mr. Christian Peper?

A. The first intimation I had of it was Mr. N. C. Harris came to George Shryock's office and spoke to me about it.

X Int. 123. Well, you had a conversation with Mr. Christian Peper about it, didn't you?

A. He asked about it, and I told him; I didn't have no conversation, but he just asked me.

X Int. 124. Were you in Mr. Peper's employ at that time?

511 A. I was at work for the St. Louis Railway Company at that time.

X Int. 125. Isn't that the railway company of which Mr. Peper is president?

A. Yes, he was president, I believe; but this testimony went in long before Mr. Peper ever spoke to me about it; he only spoke to me about it afterwards; he met me down there one night and just simply spoke to me about it, may be three or four months afterwards.

X Int. 126. Have you spoken to Mr. Peper about this case or about anything in connection with this case?

A. No, sir; I dont think Mr. Peper has ever spoken to me or me to him to my recollection; he has not that I know of.

X Int. 127. Coming back now to the transactions between yourself and Mr. E. F. Smith, I ask you again whether you decline to answer any questions in relation to the circumstances under which his shop was closed up, his place of business was closed up?

A. I certainly decline.

Counsel for complainant here gives notice that at the proper time he will move to commit this witness for contempt of court, in declining to answer the question, and declines further to cross-examine.

A. This is a personal matter and I refuse to answer, but I will state my affidavit is in the hands of the collector, the revenue collector of the first district of St. Louis.

Mr. BOYD: Are you through?

Mr. HATCH: I decline to further cross-examine until this witness has purged himself of contempt.

Mr. BOYD: Int. 128. You have said in your answer to interrogatory 33, "I laid the plug of tobacco on top of it, and I put the plates in the molds, understand, and carried them right over to the finisher and retained them in the same plate until I took them out and packed it in the caddies." In your answer to cross-interrogatory 37 you say, "I used the plates in the finisher after I got the finisher; I did not use them in the molds any more after I got the finisher."

Now, will you explain what you mean by these two answers.

512 A. I used the plates in the molds until I got the finisher; when I got the finisher I did not use the plates in the molds any more but used them in the finisher.

Int. 129. Are you employed at Little Rock?

A. No, sir, I am not employed there now.

Int. 130. Have you any engagement there?

A. No, sir, I have no engagement.

Int. 131. From here you are going——

A. To Little Rock.

Int. 132. When do you propose to go there?

A. I expected to get off to-morrow morning; at least I wrote my wife so to-day. Let me answer your question you asked me just now. I was to go to work for Mr. Halberstadt on the first of the month, but I cannot go to work on account of having this engagement in St. Louis.

Defendants' counsel notifies complainants' counsel that this witness will be kept here until Friday morning at the expense of the defendants; after that the defendants will pay no expenses on account of his remaining.

(It is agreed if this deposition would be admissible with the signature of the witness it would be admissible without the signature of the witness.)

Counsel for the complainants desires to note further that there is at present a telegraph case going on in the United States court that seems to be occupying all the attention of the court, in which many counsel are here from a distance that will render it impossible to

take up this case forthwith, but that that we will watch for an early opportunity.

At this point adjourned until to-morrow morning, ten o'clock.

513 ST. LOUIS, *April 13th*, 1880.

Met pursuant to adjournment.

Present as before.

ROBERT E. LEE being recalled, testified as follows:

By Mr. BOYD:

Int. 42. When did you go to live at Newport?

A. I left St. Louis on the second of November last, 1879.

Int. 43. How long did you live in Newport?

A. My recollection is I left there on the 16th day of March of this year.

By Mr. HATCH:

X Int. 133. When were you in St. Louis last before going to live in Newport?

A. I left here the second of November to go to Newport.

X Int. 134. How long were you here in St. Louis?

A. I don't recollect of being away from here since I came from away round by Springfield, Missouri, from Smith's factory, to St. Louis; I don't recollect of being away from here during that time—yes, excuse me, I was at Foristell, Missouri, with Mason, running a tobacco factory.

X Int. 135. What time was it you got here to the city when you came up around by Springfield?

A. Yes, sir.

X Int. 136. What time did you get to the city?

A. I was seven days on the road getting to Springfield; my recollection is I staid in Springfield six days; six or twelve days; it was twelve days I think, if I recollect aright.

X Int. 137. What time was it you got here?

A. Then I left there and came down on the train——

X Int. 138. About what month and year was it?

A. I left Evening Shade on the morning of the fourth of March, 1876.

X Int. 139. Do you remember of being round at Miller & Worley's factory very soon after getting back here to the city?

A. I recollect of being round there; how soon it was after I got back I don't recollect.

514 X Int. 140. Do you remember of going there and asking Mr. Worley to cash a Government voucher for you?

A. I asked Mr. Worley to lend me ten dollars; that I would have—I did not have the voucher yet—I would have it—and had the papers to prove that it would come.

X Int. 141. What time was that?

A. I can't tell.

X Int. 142. Give it as near as you can?

A. I can't.

X Int. 143. Was that after you came back from Evening Shade?

A. O, yes.

X Int. 144. By referring to the case of Worley & McCabe against The Loker Tobacco Company, I find your deposition was taken in that case on the tenth of October, 1877; did you at that time mention to any of those parties anything about what you had done at Evening Shade in marking tobacco?

A. I don't recollect that I ever did; I may have, but I don't recollect it.

X Int. 145. When you were at Miller & Worley's factory in the fall of 1876 you saw them marking tobacco, did you not?

A. When I was at the factory—I don't know what day it was on—he took me in the press room, and I there saw a man I was acquainted with by the name of Billy Regan there; seen him packing tobacco in caddies that were marked by tins out of the finisher.

X Int. 146. Did you mention to either Mr. Worley or Regan, at that time, that you had ever seen anything like it before?

A. I don't recollect that I did.

X Int. 147. Wasn't it remarkable that you did not mention the fact?

A. I did not pay much attention to it; just looked at it like any other tobacco man would; I was in Worley's factory and had no right to make any remarks about his business whatever. I looked at it.

X Int. 148. Didn't Mr. Worley show that to you as something new that he had recently got up?

A. I said "This is a great deal of trouble;" I think that is my statement as near as I can recollect; "This is a great deal of
515 trouble;" he says, "Yes; and it cost a great deal of money;" says I, "There is no doubt about it;" there was something to that effect passed between us there.

X Int. 149. But you did not mention the fact of ever having seen anything of the kind before?

A. I don't recollect of stating anything of the kind to him.

X Int. 150. I find by examining your testimony taken in the case of Worley & McCabe against The Loker Tobacco Company, that you say there that you quit tobacco work in 1874?

A. I quit Mr. Shryock in 1874; if it was taken down otherwise, it was not right.

X Int. 151. You probably made a little error?

A. 1874, I left Mr. Shryock, somewhere about the latter end of January.

X Int. 152. O, then, you were mistaken when you said in that deposition that you quit tobacco work in 1874, were you?

A. I don't recollect of making that statement; I was asked, I believe, when I left Mr. Shryock, and I stated 1874.

X Int. 153. Well, if you were asked in that examination when you quit tobacco work, and if you testified that it was in 1874, you were mistaken, were you not?

A. I don't understand you.

X Int. 154. I say if you were asked when you quit tobacco work and answered that you quit in 1874, that must have been a mistake?

A. I don't think I ever answered that question that way; I was asked—my recollection is I was asked when I left Mr. Shryock's employ and I said in 1874.

X Int. 155. I find by referring to that deposition, interrogatory 2, is—"Please state whether you were ever engaged in the manufacture of tobacco, and, if so, when you began the business, and when you ceased to do that business? your answer, "I was in the tobacco business about 1856, and I quit it as to manufacturing in January, I think, 1873." How did it happen that you did not remember in that deposition about your having been engaged in the manufacturing also at Evening Shade later?

A. Well, I was not asked that I know of?

516 X Int. 156. While you were engaged at Evening Shade with Mr. Smith, what kind of tobacco was it that Mr. Smith was making?

A. Plug tobacco.

X Int. 157. How was the tobacco prepared; was it hand cased or dipped?

A. Hand cased entirely.

X Int. 158. Was it heavily sweetened tobacco or otherwise?

A. Some I cased very heavy, and some I cased light; I did the casing.

X Int. 159. Was it dark or light tobacco?

A. Some dark and some half bright; well, I don't recollect of ever making any real bright tobacco.

X Int. 160. As a whole rather dark?

A. As a whole, it was what I call half bright goods; some very dark.

X Int. 161. That is, a very heavily sweetened tobacco, wasn't it?

A. Dark; it was cased tolerably heavy.

X Int. 162. Now, in a heavily sweetened, heavily cased tobacco, if a device with raised letters like Smith plate were used in the finisher, for the purpose of attempting to impress a mark into the tobacco, would it not in your opinion result that the letters would cut through the outer layers of tobacco?

A. You mean the wrappers?

X Int. 163. The wrapper down into the filler?

A. That did at first, but as I said yesterday, I got him to take it and round the edges off a little for me, or have it done; I told him it was too sharp; it cut the tobacco that way; that you have had in your hand I got along first rate with it.

X Int. 164. What would be the effect of cutting down through the wrapper into the filler in that heavily sweetened goods?

A. In my opinion it would be this; if the tobacco was in very high order the liquorice or sweetening would be apt to come out to the surface as the wrapper would be broke.

X Int. 166. Now, looking at this Smith plate, be kind enough to point out on it the points where the edges were beveled off, if you find any?

517 A. It is just smoothed up; it was rough; you find that is smooth now; there is no rough edges on it; it was rough; brought to me rough.

X Int. 167. The roughness was taken off?

A. Taken off.

X Int. 168. But it was not beveled up?

A. What I called rounded off, smoothed up, and it was done, that is, it was brought to me that way.

X Int. 169. You say rounded off; show me where that was ever rounded off in any way?

A. I stated to you I told Mr. Smith to get it rounded off, and this roughness has been taken off this edge.

X Int. 170. But it has not been rounded off?

A. Well, I told him to get it rounded off a little for me so it would not cut the tobacco.

X Int. 171. He did not get it rounded off, did he?

A. That is the way it was brought to me.

X Int. 172. He did not round it off, did he?

A. He got the rough edges taken off.

X Int. 173. You did not get the rough edges taken off?

A. I can't see anything very round there; it is smoothed up.

X Int. 174. It is not rounded off, beveled off, is it?

A. Well, it is a great deal better than it was before.

X Int. 175. Please answer the question.

A. It has not got any sharp edges on it.

X Int. 176. Has it been rounded off, beveled off the edges?

A. I can't see anything there but a nice smooth edge.

X Int. 177. Will you answer the question.

A. That is not rounded off.

X Int. 178. Is it beveled off?

A. A great deal to what it was when handed to me first.

X Int. 179. Is it beveled off?

A. Well, I can't say that it is.

X Int. 180. Then you were mistaken, were you, when you stated yesterday in your deposition that he took it and got the edges beveled off?

A. I said yesterday that I told Mr. Smith to take those
518 plates back and get them rounded off; the rough edges rounded off, as it cut the tobacco.

X Int. 181. You stated yesterday also he did it, didn't you?

A. He brought it back to me smooth, so it worked; I tried them and it worked.

X Int. 182. Now, sir, take this very plate and use in the manner you described in your deposition yesterday. I ask you, as a tobacco manufacturer, sir, if it would not cut through the wrapper into the filler?

A. It did not.

X Int. 183. I ask, sir, whether this plate would not if it was used as you describe it in your deposition?

A. It did not.

X Int. 184. I ask you not what it did, but if it would not; can you answer it?

A. I don't think it would.

X Int. 185. Very well, look again at this plate; do you not see that several of those letters are started up from the plate?

A. Do you mean coming loose?

X Int. 186. No; started up from the plate?

A. I notice the letters ain't all of one thickness.

X Int. 187. Do you not see that in several places the letters are started up slightly on the base of the plate, so that there is an opening between the bottom of the letter and the plate?

A. My eyes ain't good enough to see that there is; you can bend it over and do it.

X Int. 188. Look at the bottom of the "F," and see if it is not started up from the plate?

A. Well, sir; you may take my word for what it is worth; there seems to be a little crease there, but it don't seem to amount to anything; it is not what I would call coming loose; I can't see that it is.

X Int. 189. Take the edge of my penknife and see if it does not go underneath the letter at the base of the letter "F," slightly?

A. It goes under this corner of it here just a little bit if you shove it.

519 X Int. 190. That is also true of the letter "h," near the point where the period has came off, isn't it?

A. Well, I don't know as I know anything about this business of coming loose?

X Int. 191. Well, suppose you devote your attention to it a moment?

A. Well, I can't answer you, sir; my eyes are not very good; if I get it under the edge?

X Int. 192. Yes; I don't wish you to pry it, because you may loosen it up.

A. Well, I only answer you as I say.

X Int. 193. Now, I ask you whether in a plate used that way, with letters soldered on the base as these are, there would not be a constant trouble by reason of the letters coming off, in your opinion?

A. I can answer you this way, and it is the only answer I can give you: I did not have any trouble with the plates after they were smoothed up; I went right along and used them every day that I pressed tobacco.

X Int. 194. While you had this plate, didn't any of the letters come off?

A. Not to my recollection.

X Int. 195. If there had you would have known it, would you?

A. I would have known it of course if they had; but I don't recollect of any of them coming off.

X Int. 196. You can't be mistaken about that, can you?

A. I said I can't recollect.

X Int. 197. Would you have known it if they had come off in use?

A. At the time, certainly.

X Int. 198. To whom did Mr. Smith write for that finisher that he got, if you remember?

A. He told me he knew parties in Louisville, and that he would write to them.

X Int. 199. Do you know who those parties were?

A. I do not.

X Int. 200. Was there any name on the finisher?

520 A. None that I could see or notice of any manufacturer even; all I did know it was an old-fashioned wooden filled finisher.

X Int. 201. You don't know from whom he got it?

A. No, sir, I do not.

X Int. 202. How was it shipped there, if you know; did it come by express or freight; how did it get there?

A. I don't know, sir. Do you want to know how it came to the factory?

X Int. 205. Yes.

A. It came in a wagon.

X Int. 204. From where?

A. He told me it was at Walnut Ridge; that he would go over and get it.

X Int. 205. What was Walnut Ridge?

A. It is some distance over to the railroad.

X Int. 206. Is it a station on the road?

A. Yes, sir.

X Int. 207. On what railroad?

A. The Iron Mountain; they call it Iron Mountain; I believe it is the Iron Mountain; he said that "finisher has come, and it is over to the Ridge, and I will go over and get it."

X Int. 208. You were at the factory of the defendants on Tuesday, were you not?

A. Who do you mean by the defendants?

X Int. 209. Liggett & Meyers Tobacco Company, the day before you testified?

A. I was in there one day since I have been here.

X Int. 210. Well, it was Tuesday, was it not, the day before yesterday, the day before you testified?

A. I think I went through the factory Monday morning.

X Int. 211. Were you not there on Tuesday, the day before you testified?

A. I was at the office; yes, sir.

X Int. 212. Mr. Liggett gave you some money there, didn't he?

A. He gave me some money; I drew a sight draft on my wife in Little Rock.

X Int. 213. How much did you draw?

521 A. Thirty-five dollars.

X Int. 214. He cashed it for you?

A. He cashed it for me and took it, and it will be paid when it is presented, I think.

X Int. 215. That was the only money you received there, was it?

A. The next day he told me, Sunday; let me see, on Monday he gave me thirty-five dollars on Monday, that is my recollection; it might have been next day I went down with Mr. Liggett, and

says I, in walking up the street, he told me to come up the street with him, that is it, says I, "Mr. Liggett, I was coming down to see you; I haven't any money with me; I would like to have you loan me five dollars," just that way, and he says, "Certainly," and he handed me five dollars.

X Int. 216. That is the only money you got of Mr. Liggett?

A. That is the only money that ever came from his hands to mine.

X Int. 217. How did you happen to use up that thirty-five dollars so quick?

A. Well, if you want me to go through that I will tell you.

X Int. 218. I do.

A. I gave my sister-in-law that was here twenty dollars; her husband was killed on the Pacific Railroad on the 31st.

X Int. 219. I don't care about going any further.

A. I can give it if you want it; I had to take her across the river, and Mr. Shryock, I owed him five dollars, and I went down and paid him that five.

X Int. 220. Who paid your expenses here to testify in this case?

A. I got a letter from Mr. Liggett stating my expenses would be paid; he sent me a postal order for twenty dollars.

(The further examination of this witness was, by consent, suspended at this point.)

522 THOS. Y. HUDDLESTON, a witness of lawful age, produced on the part of the defendants, having been duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined by S. S. BOYD, Esq., on behalf of the defendants, deposeth and saith as follows:

Int. 1. Where do you live, and what is your age and occupation?

A. Evening Shade, Arkansas; age, fifty-four; occupation, sheriff of the county and farming.

Int. 2. How long have you been sheriff of the county?

A. It will be eight years this next fall; since 1872.

Int. 3. Your term runs out next fall?

A. Yes, sir.

Int. 4. Are you acquainted with E. F. Smith, of Evening Shade?

A. Yes, sir.

Int. 5. Did you ever purchase any tobacco from him?

A. Yes, sir.

(The deposition of this witness is objected to if called for the purpose of showing, or attempting to show, prior knowledge or use of the invention in controversy, for the reason that neither his name nor his place of residence, or the place where he had prior knowledge, is pleaded in the answer of defendants, as required by the statute; and the deposition is further objected to if the witness is called for the purpose of attempting to show the invalidity of the patent sued on, for the reason that that question has been adjudi-

cated in the case of Miller against Force, in the district of Kentucky, in which defendants were parties contributing to the defense, and employing their own counsel and furnishing funds, so that, having had their day in court, they are estopped from impeaching the validity of the patent, except in a proper proceeding had to set aside the former decree.)

Int. 6. During what years did you buy tobacco of him?

A. Well, every year, I suppose, since he had a factory.

Int. 7. Please state whether or not you bought any tobacco of him marked in any way.

523 A. Yes, I have.

Int. 8. What was the mark upon it?

A. It had the mark "E. F. Smith" on the plug, and the box was marked.

Int. 9. Please look at the plate marked "Smith plate" and state how that corresponds with or differs from the mark which you say you saw on the plugs of tobacco made by Mr. Smith.

A. A style something similar to that; probably the same; I can't tell.

Int. 10. During what years was it you saw his tobacco marked with the name of "E. F. Smith"?

A. I suppose about 1865; the factory was closed in 1866; sometime before that.

Int. 11. In what year?

A. 1865—1875 I should say.

Int. 12. Were you ever in Mr. Smith's factory?

A. Yes, sir.

Int. 13. How often were you there?

A. Well, I suppose I would be there once a day for a year and better.

Int. 14. Well, what occasioned you going there?

A. Well, I felt somewhat interested for the welfare of Mr. Smith; I had furnished means to buy his material, a good deal of it, and I hold his note now for fifteen hundred dollars.

Int. 15. Do you know what sort of machinery he had there to manufacture his tobacco?

A. I can't tell; I am not a judge.

Int. 16. Well, do you know what a finisher is?

A. I don't know that I do; I have seen what they call a finisher, too, I think; but it is something I don't know anything about.

Int. 17. Well, state whether or not you saw at his factory anything that they called a finisher, and describe what it looks like.

A. Well, as I recollect, it is a wooden concern, that after it is pressed they place it in that.

Int. 18. Can you state whether or not you ever saw him marking his tobacco?

A. I don't know that I ever did; I saw it after it was marked.

524 Int. 19. What was it you bought his tobacco for?

A. What did I buy it for?

Int. 20. Yes; for what purpose?

A. Well, for my own use, and for the use of the hands on the farm.

Int. 21. Do you know who was the foreman of Mr. Smith's factory in 1875–'6?

A. Well, I don't know that I did; Mr. Lee was in there in 1875, I think, but I don't know who the foreman was; him or Smith, I think. Mr. Lee did the principal business; he had other hands, I think, in there.

Cross-examination by Mr. HATCH:

Counsel for complainants, without waiving the objection to this deposition heretofore entered, proceeds to cross-examine:

X Int. 1. You said you were a farmer and sheriff?

A. Yes, sir.

X Int. 2. You have never been engaged in trade?

A. Yes, sir; I have been in trade, but I havn't for some years.

X Int. 3. Not since?

A. Not since that date.

X Int. 4. Not since 1875?

A. No, sir.

X Int. 5. How much tobacco did you buy of Mr. Smith and in what size packages?

A. In caddies; in I believe from sixteen to something over twenty pounds.

X Int. 6. From sixteen to twenty pound caddies?

A. Yes; probably more.

X Int. 7. How many caddies did you usually buy at a time?

A. Generally one; I don't know of ever buying more than one at any time.

X Int. 8. How many hands do you employ on your farm?

A. Well, I generally have from five to seven and eight.

525 X Int. 9. Where is your farm located?

A. Near where I live, in Sharp county.

X Int. 10. How far is that from Evening Shade?

A. It is near two miles.

X Int. 11. How large a farm?

A. 130 acres and some odd; 132, I believe.

X Int. 12. Isn't seven to eight men a pretty large force for carrying on a farm of 130 acres?

A. No, sir; when I farm I generally have two or three hands around home; from one to three hands.

X Int. 13. What crops did you raise last year on your farm?

A. I raised wheat, oats, and corn.

X Int. 14. How many acres of wheat?

A. I think there was forty.

X Int. 15. How many acres of oats?

A. Not so much; 15 or 20, or something.

X Int. 16. How many acres of corn?

A. The balance of the farm was in corn.

X Int. 17. Did you cultivate the whole farm last year?

A. Yes; had it done.

X Int. 18. Didn't have any of it held in reserve?

A. No, sir.

X Int. 19. Who did you sell your corn to?

A. I use it.

X Int. 20. On the farm?

A. I use it myself.

X Int. 21. How do you use all the wheat?

A. The wheat; well, sir, if I have a surplus—I raise a little wheat every year, more or less—have it ground up; it takes a good deal to do the farm.

X Int. 22. How many acres of wheat did you say you had?

A. I think I had about forty acres last year.

X Int. 23. How much did it produce to the acre last year?

A. Very little; wheat was very light.

X Int. 24. About how much?

A. Last year, I think about six bushels to the acre; 5 or 6.

X Int. 25. Then, you had about 240 bushels last year?

526 A. I don't recollect the amount.

X Int. 26. Isn't 240 bushels a pretty good allowance of wheat for one family for a year?

A. Yes, that is a good deal over the average.

X Int. 27. But I suppose your family use a good deal of flour?

A. I try to beat the average in farming.

X Int. 28. What did you use all your corn on last year?

A. Well, sir, I feed hogs, horses, and mules.

X Int. 29. How many horses and mules have you got?

A. Well, sir, sometimes I have several.

X Int. 30. How many had you last year?

A. Well at times I had several head; I trade in horses.

X Int. 31. But about how many did it average last year?

A. I suppose from eight to ten head.

X Int. 32. You used all your oats, I suppose, on those eight or ten head?

A. Yes, and had to buy more.

X Int. 33. From whom did you buy?

A. On them and others.

X Int. 34. From whom did you buy the balance of your oats?

A. Bought them of farmers in the country.

X Int. 35. Name some of the farmers?

A. Johns is one.

X Int. 36. Don't you remember any other from whom you bought oats last year?

A. I don't think I bought from any one else.

X Int. 37. How many did you buy of Johns?

A. I don't recollect; some two or three loads; and corn, I had to buy corn also.

X Int. 38. How did you happen to come up here at this examination from Evening Shade?

A. Well, I had business.

X Int. 39. What was your business?

A. Well, several kinds.

X Int. 40. Well, name it; state what it was.

A. Well, to make a settlement in part with a firm here and to buy a lot of supplies.

527 X Int. 41. Who was that firm?

A. Adler & Goldman.

X Int. 42. What did your settlement relate to: what kind of settlement?

A. My groceries.

X Int. 43. You buy your groceries usually here in St. Louis?

A. Yes, sir.

X Int. 44. So as to get wholesale rates, I suppose?

A. Yes, sir.

X Int. 45. Where are Alder & Goldman—their place of business?

A. 114 North Main street, cotton factors and commission merchants.

X Int. 46. Do you usually buy your supplies from cotton factors and commission merchants?

A. No, sir; but I frequently have them to buy for me.

X Int. 47. Well, you used them this year to buy your supplies for you?

A. Yes, sir.

X Int. 48. That is usually the business of cotton factors and comsion merchants, is it?

A. I think not.

X Int. 49. Did they do it out of friendship?

A. Yes, sir.

X Int. 50. Did you make your settlement with them yesterday?

A. No, sir.

X Int. 51. What was the trouble?

A. My cotton was not all sold.

X Int. 52. O, you raise cotton on your place also?

A. I have not the last year or two; I buy a little cotton frequently.

X Int. 53. What was the cotton that Adler & Goldman sold for you; was it some you bought or raised?

A. Some I purchased.

X Int. 53½. When did you purchase it?

A. Well, some of it last year and some of it this.

528 X Int. 54. And they had been selling it for you?

A. Yes, sir.

X Int. 55. Well, what other business did you have here, except to settle your accounts with Adler & Goldman?

A. Well, buying my supplies was about all, I reckon.

X Int. 56. No other business at all?

A. No; that is the principal business.

X Int. 57. How extensive accounts did you have with Adler & Goldman?

A. Something over a thousand dollars.

X Int. 58. What train did you come up on, Mr. Huddleston?

A. I came upon the Cairo & Fulton road.

X Int. 59. When did you get here?

A. Monday morning last.

X Int. 60. Where are you stopping?

A. Hotel Barnum.

X Int. 61. O, you are related to Mr. Smith, are you not?

A. No, sir.

X Int. 62. Not in any way?

A. No, sir; not that I know of.

X Int. 63. Now, in referring to that tobacco that you purchased of Mr. Smith, during what time did you purchase tobacco of him?

A. Well, I purchased every year, I expect, since he has had a factory; and one cause of buying of him was, he has been in my debt.

X Int. 64. Well, during what years was it you purchased of him; name the years.

A. Well, he commenced the factory in 1873-'4 sometime; I think I have purchased every year, except he closed up one year—1876; I don't recollect whether I purchased any in 1876, but I purchased every chance I could get of him, in order to get out what I had loaned him.

X Int. 65. Did you ever have more than one caddy in which you found this marked goods?

A. I don't recollect whether more than one or not; but I recollect of seeing it on it.

X Int. 66. About how many plugs in the caddy had the mark on?

529 A. I don't recollect.

X Int. 67. Half or quarter of them, or what?

A. I can't tell no more than——

X Int. 68. Or was it on all of them?

A. I can't tell of seeing it on more than one of them; it may have been on all, but I don't think it was exactly while I was there; but I know something about this matter, and saw it at work——

X Int. 69. I ask you, may it not have been that you saw the mark on the plug of tobacco about the shop—about the factory; are you not mistaken in that way, confusing it with the caddy?

A. Well, I saw it there, and some I have seen it on what I bought of him.

X Int. 70. On how much of it that you bought of him?

A. I can't tell; probably on several plugs.

X Int. 71. Probably on several plugs?

A. Yes, sir.

X Int. 72. Well, now, sir, wasn't it on at least half the plugs in the caddy that you bought of him?

A. Well, I don't know; I don't suppose it were; if it was I don't remember more on my mind of seeing them; I don't suppose it was on them.

X Int. 73. What kind of tobacco was it that you purchased of him?

A. Well, a variety: I purchased of him all kinds.

X Int. 74. What varieties?

A. The name of the tobacco?

X Int. 75. No; what style of tobacco was it?

A. It was manufactured.

X Int. 76. Yes; I presume so; was it dark tobacco or bright tobacco?

A. Well, it was generally bright.

X Int. 77. You always bought the bright tobacco, did you?

A. I prefer it.

X Int. 78. You don't like to chew the dark tobacco?

A. I don't, unless it pretty good.

X Int. 79. So you always bought his bright tobacco?

530 A. I prefer that, but I may have bought some other darker?

X Int. 80. Well, how did you happen to hear about this suit up here.

A. Well, I heard of it at home.

X Int. 81. How did you hear of it up here after you came here?

A. I heard Mr. Davidson speak of it.

X Int. 82. How did you come to testify; who brought you here?

A. The gentleman over there was around this morning.

X Int. 83. This gentleman, Mr. Foree?

A. Yes, sir.

X Int. 84. Who did you talk with about this matter since you came here to town?

A. Well, sir, I have had but little talk about it, not expecting to be witness in the matter at all.

X Int. 85. Who did you talk with, Mr. Huddleston?

A. About the matter?

X Int. 66. Yes, sir.

A. Well, Mr. Davidson and Mr. Smith, or Salamine; probably we have had some talk about it, but not a great deal, as I did not consider myself interested in no way, and no witness in the case.

X Int. 87. You spoke of a man by the name of Salamine?

A. Yes, sir.

X Int. 88. Isn't he a relative of Mr. Smith?

A. I think not.

X Int. 89. Smith's brother-in-law, isn't he?

A. Well, at present I reckon probably he is kind of brother-in-law, but it has happened since I left, the relationship.

X Int. 90. Is he here with Smith?

A. He is here; Mr. Smith has gone home is my understanding.

X Int. 91. Do you know where Salamine put up here?

A. At the Planters', isn't it?

X Int. 92. In that tobacco you bought of Smith, about how many plugs to the pound were there, as near as you can tell?

A. Plugs to the pound? I think it run from four to six, probably.

531 X Int. 93. About quarter-pound plugs, then?

A. Yes, I think the darker tobacco was generally about

four, and the brighter I purchased, as a general thing, probably five or six.

Signature waived.

Cross-examination of ROBERT E. LEE was continued as follows:

By Mr. HATCH: X Int. 219. Are you ready now, Mr. Lee, to answer the questions as to your connection with the prosecution against Mr. E. F. Smith, which resulted in the shutting up of his factory in the spring of 1876?

A. I will say this: I made an affidavit before the Government, and the Government proceeded to close up his factory; any further than that I don't know anything about it.

X Int. 220. What was the substance of your affidavit; what did it charge?

A. It charged him with not properly stamping all of his tobacco.

X Int. 221. You believed that affidavit to be true, I suppose?

A. Yes, sir.

X Int. 222. You believe so yet?

A. Yes.

X Int. 222½. What was the result of the proceedings had on that affidavit, if you know?

A. I only know from hearsay, not from my own knowledge.

X Int. 223. From what you have understood and what you have heard?

A. A Government officer told me that they had seized his place and confiscated his property.

X Int 224. Where did you make that affidavit?

A. I made that affidavit here in St. Louis.

X Int. 225. After you returned?

A. After I returned from Evening Shade.

532 X Int. 226. What date was the charge in your affidavit as the time when this wrongful marking took place?

A. I can't recollect the date; I did know it, but I have forgotten it.

X. Int. 227. It was dated prior to the time you left there?

A. It was between 1875, July 22d, and March 2d, 1876.

X Int. 228. It could not have been as late as April, 1876?

A. I was in St. Louis then I think; I got here on the last day of April, 1876.

X Int. 229. You think you got here on the last day of April, 1876.

A. It strikes me I got here in St Louis the last day of April, 1876.

X Int. 230. So that you could not have been cognizant of anything that took place at Evening Shade on the first of April, 1876?

A. No, sir, I was not there.

X Int. 231. Where were you employed directly after you got back to St. Louis in the spring of 1876?

A. I went to work for the Salvage Corps a very few days after I got to St. Louis.

X Int. 232. How long did you remain with them?

A. Six months and six days.

X Int. 233. Who was head of the corps at that time?

A. Capt. Charles Evans.

X Int. 234. How did you come to leave it?

A. Well, I had a little trouble there with a fellow, and he said he could not discharge him; that he was his driver, and says he, "I guess you better leave," says I, "All right, I will go if that is the way you look at it."

X Int. 235. Did you have a fair standing there up to this time?

A. I suppose; I knew nothing against me.

X Int. 236. Nothing against you that you knew of?

A. No, sir, nothing brought against me that I knew of, only this little scrape or fuss; let me make one correction, it was the last day of March I got to St. Louis, not the last day of April.

Signature waived.

Cross-examination of JAMES T. DRUMMOND:

533 X Int. 70. I call your attention now to exhibit "Smith Plate," which I show you, and particularly to the sharp edges of the letters there, and ask you what, in your opinion, the effect would be of attempting to mark a heavily sweetened tobacco, hand-cased, with that plate, by pressing it in the mold. I ask with reference to whether or not those letters would or would not cut through the wrapper into the body of the tobacco?

(Defendants' counsel objected to the question, as irrelevant and incompetent and leading, and, further, that the whole evidence upon this point will be moved to be stricken out.)

A. I think in a very soft piece of tobacco, heavily sweetened, that the square edges on those letters would cut through.

X Int. 71. What would be the effect of cutting through the wrapper in such a piece of goods with reference to the liquor running out?

(Same objection as before.)

A. Well, if the goods were exceedingly soft, of course the marks would fill by the sweetening used, oozing through the wrapper, filling the spaces.

X Int. 72. If the liquor did flow through the edges of the wrapper where it was cut and filled the spaces, what would be the effect when the tobacco came to be unpacked from the caddies in selling it?

(Same objection, and the further objection that a supposititious case is put, of the existence of which evidence is entirely wanting in the record.)

534 A. The effect would be to destroy or obliterate the name to such an extent that it could not be read.

X Int. 73. You observe that those letters are fastened on by solder, and, if you observe, you will see that the edges of some of them are started up from the plate. What would be the effect in ordinary manufacture of using plates for marking with letters soldered on in that manner?

A. I never had any experience in using plates with letters soldered on; but all my plates are made with wires soldered on, and I have no trouble with them; straight lettering I use wires instead of indenting the plates—soldered on to the plates; but I have little or no experience in marking tobacco with letters soldered on the plates.

X Int. 74. What would be the effect of using a flexible piece of material upon it like thin zinc, such as is shown in that plate; wouldn't it be liable to become instantly bent out of shape?

(Objected to; same will be taken.)

A. No; I don't think that would bend such a small plate as that is placed in the mold; the intention of that is to fit the cell of the mold.

X Int. 75. You have testified in regard to tobacco swelling; that you prevented it by having the tobacco in proper order and by means of hand pressure; now, do you not also prevent it, more or less, by packing the tobacco away in caddies soon after it comes out of the final pressure?

A. Yes; I pack the tobacco away as soon as it is taken from the finishers into the boxes or caddies.

X Int. 76. Wouldn't it otherwise tend to swell?

A. I don't think our tobacco, the way we press it, would swell by exposure to any great extent.

X Int. 77. That is, where you give it two pressures, or the order, which?

A. Yes; and the amount of pressure that I take to the square inch.

X Int. 78. What amount of pressure to the square inch do you ordinarily put on?

A. Six to eight thousand pounds.

X Int. 79. That is in the finisher, or in the mold, or both?

A. In the molds first; about four to five thousand in the finisher.

X Int. 80. When you press by handing in the mold with this finely-finished goods that you mentioned, what pressure do you put on it?

A. Nearly the same pressure the second time as the first.

X Int. 81. Does the tobacco afterwards go to the finisher for marking?

A. No, sir, it is not marked at all.

X Int. 82. Does not this continuance of pressure and the extent of the pressure you give it tend to make a permanent set?

A. Yes, sir.

X Int. 83. How long do you ordinarily allow the tobacco to stand in the finisher when it is marked?

A. That will be sometimes less than an hour, to an hour, and sometimes three hours.

X Int. 84. Sometimes longer than three hours?

A. Sometimes longer than three hours; that just placed in at night remains until morning.

X Int. 85. If it is placed in Saturday afternoon, when does it come out?

A. Monday morning.

X Int. 86. You leave it in, then, as long as you can consistent with your business?

A. Yes, sir.

X Int. 87. You regard it, then, as advantageous to have it remain as long as possible?

A. Yes; either in the molds or in the finishers, or both.

X Int. 88. This is for the purpose of overcoming the elasticity of the tobacco—its tendency to swell and to make a solid, hard finished lump; did you ever see what is known as the Venable machine for marking tobacco?

A. Yes, sir.

X Int. 89. Where did you see it?

A. At Venable's factory, in Petersburg, Virginia.

X Int. 90. What do you think of it as a method of marking tobacco as compared with the method you use of marking in the finisher?

536 Objected to as irrelevant, immaterial, and leading.

A. I think tobacco can be marked with the Venable machine, but I don't think it is as good a process, or can be as well done, as the way I do it.

X Int. 91. Why?

(Objected to, as before.)

A. Well, running a lump of tobacco through a machine of that description, indenting furrows in it, has a tendency to make the face rough, much more so than when the mark is put on either in the molds or in the finishers.

X Int. 92. Is there any other reason you think of?

A. Well, in this very hard pressure taken on the lump in the Venable machine between the rollers, to force a ridge deep into the plug, it is liable to fade out to some extent after it is packed into the box.

X Int. 93. Any other reason that you think of?

A. I don't think of any other reason.

X Int. 94. Consider the matter of time, if in using the Venable machine they first give the tobacco a preliminary pressure in the molds and then turn it over in the molds and give it a second pressure, and then pass it through the Venable machine to put in the lines, and then pack it in the caddies, while in using the marking process by the finisher you first press once in the mold and then press in the finisher under tins with indented lines, and then pack in the caddy, would there not be an additional handling in the Venable process?

A. There is an additional handling in the Venable process.

X Int. 95. That would be an additional expense, would it not?

A. Yes; Mr. Venable's process, as I saw him work it, was to take his lumps from the molds and place them in the finisher with smooth

plates and pack them from the finisher—run four lumps in the machine at a time; the machine was guaged to take a sheet of tobacco four lumps and mark it.

X Int. 96. Well, marking by this process, that is, the first pressure in the molds, then pressure in the finisher, then passing through the Venable machine, would there not be additional handling from pressing in the molds, than in the finisher between the plates or the indented lines and then packing in the caddy.

537 A. Yes, there is one additional handling.

X Int. 97. In a large business like what you do that would be a matter of considerable importance, would it not?

A. Well, it costs something to handle tobacco; every time we handle it we add to the cost of it; the less we can handle it the cheaper we can make it.

X Int. 98. That would take just the additional time that is required to put it through the machine, would it not?

A. Yes, exactly.

X Int. 99. How many such machines would be required in your business, in your opinion, to do the marking that you now do?

(Same objection as before.)

A. Well, I can't say as to that; I have but little experience in marking tobacco other than in a finisher.

X Int. 100. But as a tobacco man, give your opinion, as near as you can, about that.

(Same objection as before.)

A. Perhaps I had better give the opinion of the patentee?

X Int. 101. No, I want your opinion.

A. I should think it would take three machines in a factory like ours—Venable machines.

X Int. 102. What do those machines sell for, if you know?

A. That I don't know; probably two hundred dollars apiece, but I can't say as to that.

X Int. 103. How many persons does it require to run a machine, one or more?

A. I should think it would take two, at least.

X Int. 104. To run one machine?

A. Yes, sir.

X Int. 105. What would be the ordinary average cost per day of a hand to work that machine?

A. From seventy-five cents to a dollar and a quarter.

X Int. 106. At an average of a dollar and [a] quarter, it would require about six dollars a day for extra hands in your business?

A. Yes, sir.

X Int. 107. That is for your business, say, about eighteen hundred dollars a year in addition, the expense of the machines?

538 A. I am only guessing at the expense of the machines; that is, what it would be if it required three machines and two hands to each machine.

X Int. 108. You never have tried this Gibson and Kennedy process, have you?

A. No, sir; I have never tried it.

X Int. 109. So that you only testify as to your opinion in regard to the matter, and not from any actual test of this device?

A. I have made no actual test of it.

Re-examination by Mr. BOYD:

Int. 110. How long have these improved molds of which you speak been in use?

A. I have been using them—that is, the iron molds—ever since 1864.

Int. 111. Do you know whether or not other people were using them as early as that?

A. They were not.

Int. 112. When did other people commence to use them?

A. Well, as to St. Louis, I think Liggett & Dausman were the first to use them in St. Louis, and they commenced about 1871 or 1872, if I remember right, using iron molds; previous to that they had used wooden molds.

Int. 113. Do you mean to be understood as saying that with wooden molds no finely-finished tobacco was ever made?

A. No, I don't say that.

Int. 114. Well, do you mean it?

A. I did not; I say that tobacco—that I have made fine tobacco in wooden molds; I used wooden molds up to 1873 myself partly.

Int. 115. In those molds did you make bright tobacco?

A. Yes, sir.

Int. 116. You have stated in your cross-examination that black tobacco was made in the West here; did you mean to be understood as saying that bright, fine tobacco was not also made?

539 A. O, no, I did not mean to be understood as saying that; all grades of tobacco was made in the West, the principal portion, I think, of tobacco made in the West was black tobacco, for the reason that the largest concern in the West manufactured principally black goods; Harris, Bebee & Co. made no bright goods of any consequence; Myers & Drummond, I should think, made five pounds of black tobacco to one pound of bright at the time referred to.

Int. 117. Now, please tell what you mean by bright goods and what by black goods.

A. I mean by bright goods a tobacco that is not very heavily sweetened, and the filler of which is bright and the wrapper is bright.

Int. 118. In tobacco factories are finishers alongside of the retainers?

A. In my factory the finishers are some distance from the retainers.

Int. 119. Then, in estimating the difference in cost between the marking in the molds and marking in the finishers, consideration should be had of the fact whether or not the tobacco marked in the

molds was afterwards pressed in the finishers or not, should it not: in other words, if the tobacco was marked by the first pressure in the molds, and then packed into the caddy, how much more time would it take to do this than to press it once in the molds and then press it in the finisher, and from the finisher to carry it to the caddy?

A. Why, it would certainly be less expense to press it once in the molds, mark it in the molds, and to carry it from the molds to the caddy and pack it, than to take it through the finisher.

Int. 120. Suppose the tobacco was marked in the molds after it was turned in the mold, and then packed directly into the caddy, which would take the most time to do, that, or to press it once in the molds and then mark it in the finisher, and then pack it into the caddy?

A. It would take a little more time to turn it in the molds and pack in the caddy than to pass it through the finisher.

Int. 121. Why?

540 A. For the reason turning out in the molds, when lumps take a firm set, as it is called, they are little more troublesome to get back in the cells than when they are fresh; it takes the operator a longer time to get the plugs back in the cells; he has to handle one at a time, whereas, when they are passed through the finisher, they can be handled very readily, four lumps at a time packed in the finisher.

Int. 122. If it were attempted to mark in the molds black tobacco not in a good condition, or bright tobacco not in good condition, would the mark remain?

A. No, sir; the mark would not remain in the tobacco in a poor condition, no matter whether in the molds or in the finisher.

Int. 123. Then, in your answer to cross-interrogatory 70, in relation to the use of the Smith plate with very heavily sweetened black tobacco, did or not your answer depend upon the fact that the tobacco was not in proper condition to be marked?

A. Yes; if the tobacco had been in proper condition to be marked, it could be marked with Smith plate.

Int. 124. How long has it been known among tobacco manufacturers, that to obtain a good result a permanent set, as it is called, must be given to the tobacco?

A. Well, I have known it ever since I have been in the business, answering for myself.

Int. 125. Do you know whether or not the trade generally, the manufacturing trade, know that fact?

A. I think every practical manufacturer knows it.

Int. 126. Now, what would your experience as a practical manufacturer teach you would be the result, and what action would a practical manufacturer take upon pressing his tobacco once and examining it and finding that it was not in a good condition, not sufficiently set, what would he do to put it in proper condition as to set?

A. Evaporate the water out of it and make it harder.

Int. 127. How?

A. By drying it; put it back in his dry-house, all the lumps back in his dry-house, and dry them.

Int. 128. Suppose the tobacco was not in good condition
541 after pressing it once, and the manufacturer finds that it was not set, what would he naturally do to produce a set?

A. Press it again.

Int. 129. Well, how long has that been a fact known among the tobacco manufacturing trade?

A. I have known it ever since I have been in the business.

Int. 130. You have been asked in relation to marking tobacco with the Blackberry mold there; now, will you please examine that mold and state whether in your opinion, in the condition it is in now, a good mark could be obtained on tobacco that was in good condition?

A. (Examines.) Yes, I could mark a plug of tobacco with that set of molds.

Int. 131. Is it or not a fact that the old style wooden molds were better, and produced a better result when new than after they became old, as far as the finish of the plug was concerned?

A. Yes, they produced a better finish when new than when after they had been in use a number of years.

Int. 132. Is or not the real difference between the old wooden molds and the new iron molds due to the fact of the greater rigidity of the iron molds, and the greater evenness of the surface against which the tobacco is brought, and the nicer fitting of the block to the cell?

A. In answer to that I would say, that the iron mold is a much better piece of mechanism than the wooden one; furnished with blocks fitting the cells more closely, and the face and back retains its even, smooth surface, whereas the wooden molds the blocks would wear on the edges and sink in the middle and make the plugs uneven in thickness.

Int. 133. Suppose a set of wooden molds in good condition had upon the face of all of the blocks a plate with a word upon it, will you please state now what difference of cost there would be in marking tobacco in the mold with such a device from marking it in the finisher after the preliminary pressure in the molds?

A. It would be cheaper to mark it in the molds if only one pressure was taken.

542 Recross-examination by Mr. Hyten:

X Int. 134. You are pretty familiar with the processes used by the different manufacturers in marking their goods, are you not?

A. Well, I suppose so; yes.

X Int. 135. Do you know of any manufacturer that in general practice marks his goods by one single pressure in the mold?

A. I know of no manufacturer who marks his tobacco in the molds by one pressure.

X Int. 136. In your opinion, as a practical tobacco man, can tobacco be satisfactorily marked in that way, that is, with one single pressure in the mold?

A. I think it can if the molds are in good condition in every respect, and allowed to remain long enough time at one pressure; al-

lowed to remain in the molds the same length of time that is required to pass through the finisher.

X Int. 137. Why is it no one manufactures that way, then?

A. I don't know of any one that manufacturs that way is my answer.

X Int. 138. You don't do it yourself?

A. No.

X Int. 139. You prefer the other method?

A. I prefer the other method.

X Int. 140. Why do you prefer the other method?

A. I prefer it because I can make a better finish on my tobacco and can really save the expense of molds by passing the work through the finisher.

X Int. 141. How is that; explain?

A. Well the molds are more expensive than the finishers, and take up more room and cost more money.

X Int. 142. If you attempted to mark tobacco with one pressure in the molds would you not apply very heavy pressure?

A. Yes, sir.

X Int. 143. About how much?

A. I should apply from six to eight thousand pound[s] to the square inch to press it.

X Int. 144. What would be the effect of using a set of molds like Exhibit "Blackberry Molds," the wooden molds there, for a month for marking tobacco in the molds, supposing the blocks all to be faced with the word "Blackberry," like the one in the corner, applying a pressure of six to eight thousand pounds to the square inch; I ask you whether such a set of molds would stand it?

A. No, sir; they would not; the wooden molds would not stand it.

X Int. 145. How long would they stand it?

A. Possibly about a day or two days.

X Int. 146. Then it could not be satisfactorily done in a set of molds like that?

A. Not with that pressure.

X Int. 147. If you attempted to do it with less pressure would you not be required to leave the tobacco in the molds such a length of time that in order to secure a distinct mark it would greatly clog your business?

A. That would probably occur. The person manufacturing would have to leave that a longer length of time in molds of that kind than in well built iron molds, for the reason that the same amount of pressure cannot be taken on a set of wooden molds that there can be on a set of iron molds.

X Int. 148. Now, supposing you were using that very set of molds, "Blackberry" set, to mark tobacco such as you have testified to being made in this community ten years ago, heavy, sweetened, black goods, and it should appear as a fact the letters cut through the wrapper into the filler, would you regard that as satisfactory?

A. No, sir.

X Int. 149. It would not be of any account, would it, under those circumstances?

A. Under those circumstances it would be of no use whatever.

X Int. 150. Now, take this Smith plate, with sharp edges as that is made even in bright goods, would not that, in your opinion, cut through the wrapper into the filler?

A. Well, it would cut the edges of the wrapper.

X Int. 151. Would it be satisfactory, in your opinion?

544 A. It would not be satisfactory workmanship for me.

X Int. 152. It would tend, when it cut through the wrapper, to pry up the edge of the wrapper when the plate was taken off?

A. Yes, sir; that would be the result.

X Int. 153. If you were to mark all of your goods by plates firmly secured to the follow block, as in "Blackberry Exhibits," would there not be an additional expenditure for an additional set of molds, and on each separate set of molds also, over appliances for marking by means of lines indented in the finisher plate?

A. It would be a great deal more expensive to fix marking plates to the cell blocks of the molds, as "Blackberry" is fixed to the block, than it would be to make the plates for marking in the finisher.

Signature waived.

STATE OF MISSOURI, *City of St. Louis*:

I hereby certify that the witnesses whose depositions are hereinbefore contained appeared before me, and, after being duly sworn and cautioned, testified as herein set forth.

I. L. WALBRIDGE,
Special Examiner.

545 DISTRICT OF KENTUCKY:

I, Samuel B. Crail, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 68 pages of manuscript, and 478 pages of printed matter, contain a true and complete transcript of the record of the proceedings had in the court in the case mentioned in the caption hereof.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, this 1st day of July, 1882.

[SEAL.] SAML B. CRAIL, *Clerk.*

Endorsed on cover: Kentucky C. C. U. S. No. 295. Anton Miller & Christian Worley, John Finzer, Frederick Finzer, Rudolph Finzer, & Nicholas Finzer, partners as John Finzer & Brothers, appellants, vs. Samuel J. Foree and Edward J. Foree. Filed 4th October, 1882.

Addenda.

Plugs of tobacco, in the year 1866, were put upon the market by James M. Venable, of Petersburg, Va., and called "Cable Coil." Afterward, J. P. Williamson, of the same place, became the successor of Venable in the business, and from 1868 onward, large quantities of this style or brand of tobacco were made and sold. *Williamson*, p. 262, ints. 4–11.

An exhibit of the brand is in evidence, showing that it was intended to represent a cable, and was formed in a mould with a cord wound around it, which, by pressure in a "finisher pot or mill," was made to indent the surface of the plug, so as to leave the permanent impression of the cord.

The "finisher pot" was filled to the top with layers of tobacco plugs, side by side, each so corded, and alternate tin and sheet-iron plates, and the whole mass subjected to a heavy pressure (p. 263, ans. to int 9).

Confirmed by *C. W. Spicer* (p. 265), and by *C. A. Jackson* (p. 265, 266).

The main fact of the existence of this brand of tobacco, so impressed with a cord on its surface, is further established by Compl's witness, *William Larum* (p. 137); the only criticism which this witness makes is that the box in which the plugs were packed was a "mould" rather than a "finisher."

but he concedes that there were a series of layers of plugs, each corded, and a series of plates or blocks arranged alternately with the layers of plugs, and the whole subjected to pressure. (Ans. to int. 14, p. 138).

Also, the letters T & B the initials of the tobacco manufacturers, Tuckett & Billings, of Hamilton, Canada, were impressed in plugs, and specimens of these goods exhibited at the Tobacco Exchange in Richmond, Va., in 1870–1871.

R. A. Mills, p. 266.

J. B. Pace, p. 266.

As to the ease with which by a "single pressure" ineffacable imprints may be made in tobacco plugs, as distinguished from the so-called process of using two pressures, the first for the plug in the "mold," and the second for the plug in the "finisher" with the stamping plates applied only during the second pressure, see deposition of *James T. Drummond*, p. 289, Ans. to Int's 17–23.

THE RE-ISSUE.

The identity of the original patent with the re-issue, so far as its specification and first claim are concerned, is too plain for argument.

To facilitate their comparison by the Court we have printed them on a single sheet attached to the end of this brief.

That it was the intention of the patentees to make the first claim of the re-issue substantially identical with the original claim, and if anything, more limited, and that such was the understanding of the Patent Office is proved by the opinion of the Board of Examiners-in-Chief. Rec. p. 228.

Respectfully submitted,

GEO. HARDING,

FRANCIS T. CHAMBERS,

Of Counsel for Appellants.

"A. I used that in the finisher *by putting it "under the plug of tobacco; putting it on top when "packing.*

"Int. 38. When you marked in the finisher as "you say with metal plates interposed between the "layers of tabacco, *where did you put this metal "plate bearing the name of E. F. Smith?*

"A. *I put it on top of the sheet of tin, and the plug "of tobacco on top of it.*

Lee, when questioned on the same matter, described an entirely different mode of use, and states that he continued to use the plates in the mould, and took the plugs from the mould with the plates sticking in them, to the finisher, (pp. 321–2.)

"Int. 33. How did you arrange them in the "finisher; how was the tobacco arranged in the "finisher?

"A. The tins were laid down; had no names "on the tins; had large flat tins, and laid the plugs "on top of it; *but bear in mind this, that I put the "plates in the moulds, understand, and carried them "right over to the finisher and retained them in the same "plate until I took them out and packed it in the "caddies.*

"Int. 34. How long did you continue marking "in *that way?*

"A. As long as I was with him."

See also p. 324, +Q. 21.

We submit in conclusion, that it is abundantly proved that these knaves carried their knavery into the witness stand and lied about the use of this plate. That there is no evidence to support their pretence that they discovered and used our process, and that the circumstantial and direct evidence to the contrary is overwhelming.

"get any one to make them there, and I expected
"to come to St. Louis and get them made in the
"spring; I just made *those two* to see what I could
"do.

"+Int. 3. You think there were *two*, but you
"could not find but one.

"A. I couldn't find but one; no, sir.

"+Int. 4. Did you ever make any other plate
"with your name on it, to be used in the manufac-
"ture of tobacco, except *those two*?

"A. No, sir."

Lee, who says he used the plates every day, thinks he had *seven* (p. 323).

"+Int. 7. How many of those plates did you say
"there were like this Exhibit Smith Plate?

"A. I told you I don't know.

"+Int. 8. Give me the number as near as you
"can?

"A. I can't tell, I know of two, and *it strikes me*
"*I had seven; now I am not positive of this; it seems*
"*to me I had seven plates.*

"+Int. 9. How much tobacco could you mark
"that way with the seven?

"A. You could mark seven plugs in the set.

"+Int 10. Did you ordinarily use the whole
"seven?

"A. If I had that many plates.

"+Int. 11. You used all the plates you had?

"A. I used all the plates I had."

Next as to the way in which the plates were used in the finisher.

Smith in describing this pretended use states that the plate was laid on the finisher tin and then the plug from the mould placed on top of it (pp. 305-6).

"Int. 16. After you got a finisher what did you
"do with the plate?

have called every merchant of Evening Shade who sold Smith's tobacco, and a number of friends of Smith who made a practice of stopping at his factory and watching the manufacture of plug tobacco, some of them, as they say, frequently assisting at the press, and every man of them swear that they never saw or heard of a marked plug of tobacco. This is not merely negative testimony. The Gadds and some of the others saw everything that was done and produced at the factory in the regular course of its business, and they *know* that the plates were not used nor the plugs marked as Lee swears they were; as for the others, it is to say the least hard to believe, that if this process was used as appellees contend, they could have been ignorant of it.

Fourth.—As to the want of correspondence in the testimony of Smith and Lee. Smith and Lee certainly agree in saying that they used the Smith plate in the finishing process, from the fall of 1875 till the spring of 1876, and we have pointed out the improbability of their story, the want of confirmatory evidence, and the abundance of evidence to the contrary; but, besides all this, there is in the testimony of these very men, such contradictions and discrepancies as are the almost inevitable ear marks of a fraud of this character. Starting with their statement that the plate was used in the finishing process for many months, it can hardly be reconciled with the truth of this assertion that they should radically differ, first, as to the number of plates used, second, as to the way in which they were used, yet such is the fact.

Smith, who had the plates made, is certain there were not more than *two* plates, perhaps but one (pp. 306-7).

"+Int. 2. About how many of those plates like
" Exhibit Smith Plate, did you have?
"A. Well, sir, I don't recollect; *I think there*
" *were two*, but I did not find but one; I couldn't

when he saw these plugs, and nothing in his deposition indicates that they were made by our process.

Third.—As to rebutting evidence. *Davidson*, who is referred to and quoted by both Smith and Lee, flatly contradicts their evidence.

Lee swears that he came to the factory to see the operation of marking the tobacco, and he repeats a conversation which he pretends to have had with him.

Davidson swears that he never saw the plates used at any time (p. 154, Q. 7; p. 317, Q. 11).

Lee swears that he saw a marked plug in a caddy Davidson had for sale at his shop, and that they talked about the mark and its permanence.

Davidson swears that he never saw but one marked plug, and that one was brought by Smith soon after he made the plates for him, and that that plug was roughly and imperfectly marked (pp. 153–4).

And further, Davidson testifies (p. 154), that he made the plate under an agreement with Smith, that if the experiment was a success, they would take out a patent for it, and that after seeing the one imperfect plug immediately afterwards, he never heard of the matter again until it was raked up for use in this suit.

This witness then proves that much of the testimony about the marking of plug tobacco was deliberately false, mere reckless lying; and his connection with Smith in the experiment was such that if Smith had gone on with it he must have known what he was doing.

So much for appellees, *one* respectable witness, and in addition to his evidence we have the testimony of Smith's only white employees, the Gadds, who prepared, pressed and finished his tobacco, and swear that they never saw the plate used on any plugs marked, although if Lee spoke truth, they *must have seen* from two to four plugs marked every day; besides these, we

finisher tins alongside of each other and without intervening partitions, and the pressure applied is solely on the flat side of the plug which must inevitably spread sidewise and lengthwise to some extent, and therefore have a larger surface than when it left the mould, but the name plate could not expand in this way, and even supposing that it could be placed and kept on a single plug, that plug, when the plate was pressed into it, would swell or curl up around its edges in a thin ridge which would make the plug unsalable.

Second.—As to confirmatory evidence. There is none. There are but three other men who ever saw a plug of tobacco marked with Smith's name, Davidson, Huddleston and Metcalf.

Davidson was shown a single plug *shortly after he made the plate for Smith*, and never saw or heard of the matter again. (Rec. pp. 153–4.)

Huddleston (pp. 339 to 335). This witness's testimony is vague, and to some extent impeached, but giving it the fullest credence to which, standing alone it could be entitled, it proves nothing more than that at *some time in 1875* he saw one or more marked plugs. The defendants did not even attempt to show that this time was subsequent to the end of September when the finisher came to Smith's factory, and his testimony adds no support to the story that these men ever used our process, or even that they marked a plug of tobacco in any way after they got a finishing press.

Metcalf (pp. 144 to 147). This man was called by the appellants. He testifies that Smith showed him one or two stamped plugs as something he was *experimenting on* (pp. 146–7), but he is sure that Smith never carried it on in his business, and never saw or heard of any other marked plugs than those experimental ones Smith showed to him. Metcalf does not know

First.—Its probability; *second.*—How far it is confirmed by other evidence; *third.*—How far it is contradicted and rebutted; *fourth.*—How far the depositions of Smith and Lee are consistent with each other.

First.—As to probability. We must look at the men themselves, and we find them *knaves.* Now as to their story. The history of the similar efforts to mark tobacco plugs shows that all (Cope, Gibson, Fisher, Boyce, &c.,) who had started with similar ideas had gone, as they did, to the mould, and had stopped there in spite of the fact that finishers were familar to them and in use in their factories. The probabilities then were that Smith and Lee would stop where all others had stopped, and against their ever trying to mark tobacco in the finisher when they got one.

After being closed up by the Government, Smith took out a new license, and in 1877, began again to manufacture plug tobacco, but in spite of his pretended successful discovery and use of our process in 1876, he never employed it in his business or made any effort to use or patent it (Smith, p. 316). Is this to be reconciled with his story as to the continued experimenting of 1875 and 1876; the expense incurred to make the test and its perfect success, and continued use until his factory was seized.

But what we beg your Honors to most carefully consider after familiarizing yourselves with the nature and mode of use of a finishing press, is the impracticability, the practical impossibility of using the "*Smith plate*" in the finisher in the manner described by Smith and Lee.

This plate was made for use in the mould and was shaped to fit loose into one of its cells; it was therefore of the same or of a slightly smaller size than the plug moulded in this cell. Now when the plugs are taken from the mould to the finisher, they are placed on the

refer to other witnesses of unimpeached character as supporting the story of Smith and Lee.

Starting now, however, with the knowledge of the fact that the Smith plate was made and used *before* Smith had even contemplated the purchase of a finisher, we are next brought to the assertions that the finisher was purchased for the purpose of using it to mark the tobacco, and that immediately upon the arrival of the finisher at Smith's factory, it was used for this purpose, and that in every batch the Smith plates were used to mark one or two of the plugs until the factory was finally seized, by the Government, in the spring of 1876.

Now, in the first place, it is far from probable that such a man as Smith would have purchased a finisher for this purpose; we have already shown that it was not an obvious or natural instrumentality from which to expect a successful marking that could not be accomplished in the mould; and if the idea had occurred to a man unprovided with the machine, he could easily have tested its practicability by the use of a piece of iron and a piece of tin in the mould-press, and certainly circumstanced as Smith was, would not have ordered a finishing-press with this sole object in view.

Now Smith is rather cautious when he comes to talk about the use of the finisher, "he don't recollect so well about *that*," (+Q. 13). But Lee takes a bolder flight and swears that he used the Smith plates in the finisher with every batch of tobacco, or twice a day, until the Government closed the factory (Qs. 38 and 40), and that Davidson came up to see how they worked (Q. 41), and afterwards had a marked plug which he and Lee examined and commented on (+Qs. 43 to 47).

Now to get at the value of this testimony let us examine:—

"+Int. 49. How early was it, as near as you "can tell, that you tried this tin in the finisher, "this marked plate?

"A. I believe I stated to you before it was some "time in August, that Mr. Smith brought it to "me; some time in the month of August, 1875.

"+Int. 50. *I asked you how early it was you first "tried it in the finisher?*

"A. *Well, we did not get the finisher I think till long "about the latter end of September.*"

In the above testimony your Honors have the story of the origin and use of the Smith plate as the arch witnesses, Smith and Lee, told it; and you see that even the testimony of these unmitigated scoundrels does not sustain the opinion of the court below, but makes out a much less plausible story.

The plate was not, as the court supposed, made for use in the finisher, but was made to fit into and be used with *the mould;* precisely as the inscription on the "Blackberry" mould was used, and the plate was used in the mould at a time at least two months before any finisher was bought by Smith, and as both Smith and Lee admit, and as we have proved was necessarily the case, its use in the mould demonstrated the impracticability of marking tobacco permanently in this stage of the process. The court below was then radically wrong in stating, as it did, (page 20) that Smith's earlier experiments satisfied him that it was possible and necessary to mark tobacco in the finishing process and that having ordered a finisher with *this* object in view he AFTERWARDS consulted with Lee and Davidson and had name plates made for use in the finisher; yet it is upon this erroneous impression as to the *purpose* for which the plates were made and the *time when* they were made that the court based its finding, and is able to

"you break it up; you see the impression can be "made in the finisher after the work is made solid, "and would save this breaking up work and "having the bother of them in the moulds: that is "my idea exactly.

"+Int. 42. From your experience, then, as a "practical tobacconist, you think that tobacco could "not be marked successfully with a plate of this "kind in the mould?

"A. No, sir; I did not say that; but it is a great "deal of trouble, the finisher will do away with "all that trouble; done all at once.

"+Int. 43. *Do you know any one that bought any "of this tobacco of Mr. Smith that had a mark on it?*

"A. *I recollect of going down to Mr. Davidson's "store one day, and of him telling me the tobacco gave "such good satisfaction, and he pulled out a plug, and "I noticed "E. F. Smith," in the plug, says I, "there "is some of that work, George," just that way.*

"+Int. 44. That was at Davidson's store?

"A. Yes, sir.

"+Int. 45. That is the Mr. Davidson who testi- "fied to-day?

"A. He was on the stand to-day.

"+Int. 46. It was to him you showed it?

"A. I stated "Here is that mark; it stays there "very well, don't it?"

"+Int. 47. You called his attention to it?

"A. I called his attention to it right there and "then.

"+Int. 48. Did he use much of that tobacco?

"A. He only bought one caddy of it while I was "there, one or two; I know there was one and "perhaps two; I don't know what Mr. Smith did, "you know; he was selling goods.

"there was another set of plates like these; the "first I would not have, because they did not make "a deep impression; they were cut in zinc, and "this piece of zinc left a small figure; you could "not keep it there at all, and I told him to get me "some raised letters."

Page 324:—

"+Int. 20. As I understand you, you put this "Smith plate in the bottom of the cell in the "mould and then put the tobacco above it, and it "was pressed, and then you turned the whole "thing over without removing the plate from the "tobacco?

"A. Before I got the finisher.

"+Int. 21. And that was pressed. After you "got the finisher instead of turning it over you "took the plug of tobacco with this plate in it "right into the finisher?

"A. Yes, sir.

Pages 325 and 326:—

"+Int. 38. How do you fix the time as August, "1875, when you began to use this Smith plate?

"A. I fix it from recollection of the facts.

"+Int. 39. *Why is it that you think that this would "not be as successful when used in the moulds?* I did "not understand the reasons that you gave.

"A. *You want me to tell you why?*

"+Int. 40. *Yes, sir.*

"A. *Well, if you were a tobacco man you would "see it yourself;* you would not ask me; I cannot "explain it to you.

"+Int. 41. Explain it as well as you can to me "who am not a tobacco man.

"A. Handling the work in the moulds, you "understand, the more you handle it there where "it is in the raw state, and goes in the moulds,

"off and packed the tabacco in the caddies, you "understand, and put the heads in.

"Int. 25. After it was put in the caddies, what "was done with it?

"A. Well, Mr. Smith sold it.

"Int. 26. *How long did you continue doing that?*

"A. *Well, I think it was some time about the fore-part of September.*

"Int. 27. *Of what year?*

"A. 1875.

"Int. 32. Well, what did you do with those "plates after you got the finisher?

"A. I went on and used them in the finisher as "far as they would go."

Page 322:—

"Int. 37. How was the impression made by those "plates when put on in the mould and when put "on in the finisher, as to distinctness?

"A. Well, I will tell you; I have found this, "that *in the moulds, you see, I took out two sets a day;* "IN THE MOULDS IT DID NOT LAST; *but when I got to the* "*finisher it was perfect, and when I got to using the* "*finisher it remained there.*

"Int. 39. *How often did you use those plates?*

"A. EVERY SET.

"Int. 40. *You run two sets a day?*

"A. *Two sets a day; yes.*

"Int. 41. Do you know who made the plates for "Mr. Smith, and who made this plate by which "you did the marking?

"A. I only know by what Mr. Smith told me; "if that is testimony I will give it. Mr. Davidson "came up; Mr. Smith, of course, told me he was "going to have Mr. Davidson make them, and "*Davidson came up to see how they worked, and I* "*showed him how they worked.* You must recollect

"A. That was in *August*, 1875."

And continues:—

"A. He brought me some plates before those, "cut through; they did not make an impression; "I do not see them here; I had this made after- "wards; I don't know how many of those there "were; I can't say.

"Int. 19. *What did you do with them?*

"A. *I put them in the* MOULDS, the bottom of the "chamber; this is 3 inches by 6; I laid it in the "mould chamber, for instance like that; this is "the size of the mould, and I put the plug on top "of it and then pressed it.

"Int. 20. After the tobacco was pressed, what "was done with it?

"A. I turned the tobacco over first for some "time until I got a finisher.

"Int. 21. What do you mean by 'turning it "over;' explain that?

"A. I put the tobacco in the moulds and pressed "it, knocked it out and reversed it; that is what "we call turning over.

"Int. 22. When you passed it through that "operation, when did you first put the plate in?

"A. *First I put the plate in the* MOULD, and put "the lump on top of it; after it had stood two "hours, knocked it out, reversed it and pressed it "again.

"Int. 23. Were the plates still in?

"A. Certainly.

"Int. 24. What was done with the tobacco you "pressed in the moulds that way?

"A. Now I want you to understand me thor- "oughly, because I want to be understood. *I had* "*no finisher at that time;* at the time that I had no "finisher, as a matter of course I pulled those plates

"+Int. 4. *Did you ever make any other plate with "your name on it to be used in the manufacture of "tobacco except those two?*

"A. *No, sir.*

"+Int. 12. Now, do you remember whether "you used one or two plates of this Exhibit Smith "Plates in that finisher?

"A. I don't recollect; I used some letters that "I cut out; first out of sheet zinc, like that I dis- "tributed myself in that experiment first, after I "had seen the impression of the screw heads; but "I don't recollect so well about the plates; David- "son recollects, I think, better than I do; he says "there was two.

"+Int. 13. *You don't recollect so well about using "those plates in the finisher?*

"A. *No, sir; the idea I had was to experiment to "see whether it would work or not.*"

Page 316:—

"+Int. 140. When did you to commence to "manufacture again after stopping in 1876?

"A. I believe my license dates from the first of "July, 1877.

"+Int. 141. *Did you make any plug tobacco in "1877?*

"A. *Yes, sir.*

"+Int. 142. *Did you mark your plug tobacco?*

"A. *No, sir.*

"+Int. 143. *Not in any way?*

"A. *No, sir.*"

Turning next to the testimony of R. E. Lee, he testifies (page 320) that the Exhibits Smith Plate is like one which was brought to him while he was in Smith's employ, and is asked,

"Int. 14. When was that, and who brought "it to you?

Record page 304:—

"Int. 9. For what purpose was that made?

"A. For marking the name in the tobacco.

"Int. 10. What time was the plate made?

"A. Some time in the warm weather, in 1875.

"Int. 11. After the plate was made, what was "done with it?

"A. It was used in marking tobacco.

"Int. 12. *In what way did you use it?*

"A. *By putting it in the cell* IN THE MOULDS and "putting the plug of tobacco on top of it."

Page 305:—

"Int. 15. *How long did you continue marking "tobacco by means of that plate* IN THE MOULD?

"A. I don't recollect the exact time; *I marked it "a month or two probably,* AND THEN *sent and got a "finisher.*

"Int. 16. After you got a finisher, what did you "do with the plate?

"A. I used that in the finisher by putting it "under the plug of tobacco; putting it on top when "packing."

Pages 306 and 307:—

"+Int. 2. About how many of those plates like "Exhibit Smith Plate, did you have?

"A. Well, sir, I don't recollect; I think there "were two, but I did not find but one; I couldn't "get any one to make them there and I expected to "come to St. Louis and get them made in the "spring; I just made those two to see what I could "do.

"+Int. 3. You think there were two, but you "could not find but one?

"A. I couldn't find but one; no, sir.

process, they should have abandoned the object as impracticable, as they all did, and that the attainment of success should be left to *an inventor*.

But Judge Baxter concedes that this process did involve invention, and in his mind the only question in the case was whether this invention was first made by appellants or by Smith and Lee, and this is to be answered by determining whether these men and the witnesses brought to support them have made out beyond a reasonable doubt a prior use of the patented invention. The greater part of the opinion of the Court is devoted to a review of this evidence and a statement of the facts proved, and it will be found that in most essential and vital particulars the Court below has misunderstood the testimony. The story told by the Court is not the one told by the witnesses, and while it may be as his Honor says (p. 21) that: "IF then, said plate (Smith's) was made AT THE TIME and FOR THE PURPOSE mentioned (by the Court)" then "it follows as the night follows the day beyond all reasonable doubt that it was so used," what becomes of this conclusion when it is shown that Smith's plate was made for a *different* purpose and at a time *before* Smith had ever thought of using a finisher in his business? Yet, this is indisputably true, and we will show your Honors in addition that contrary to the opinion of the Court below, there is absolutely *no confirmative evidence* as to the pretended knowledge and use of *our invention* by Smith and Lee but that *all* the evidence bearing on the matter goes to show that having, like the "Blackberry" experimenters, found that the plug could not be permanently marked in the mould, Smith, like his predecessors, gave up the attempt to mark his tobacco.

Turning now to the testimony, we have first the testimony of E. F. Smith, who, after producing the Exhibits Smith Plate, testifies as follows:

liars, Smith and Lee, the discovery of whom by the appellees, after this case was decided in favor of the appellants, was made the reason for re-opening the case, and ultimately for declaring the patent void.

But was this use of the finisher an obvious or even a natural one? It is the *mould* by which the coil or bundle of tobacco is consolidated and shaped into the square, round, oval or irregularly shaped plug, and such being the case it was so natural as to be almost inevitable that any one wishing to change the form of the plug should seek to do it by the familiar and only forming device known to the trade—the mould.

The finisher, as the trade knew it, was a device for smoothing down irregularities left by the mould, for polishing the wrapper, and preserving the form given in the mould, its existence and use was to prevent indentations and irregularities in the surface of the plug, and to turn to this smoothing machine as the means of moulding a trade mark into the formed plug was no more *natural* than for a laundress to seek to cleanse her linen not in the tub but by her flat-iron. Now that appellants have directed us to use the finisher to mark the plug, have directed us how to use it, and have shown us that the plug can be perfectly marked in this stage of its manufacture, it is not difficult to find explanations and reasons as plenty as blackberries as to how and why this is the place and time to do it; but this *knowledge* is the consequence and not the cause of the invention, and divesting our minds of this knowledge we submit that it was not surprising that none of the unsuccessful experimenters hit upon our invention, but on the contrary it was natural that they should seek to mark the plug in the shaper or mould, and that failing to accomplish the object, in this stage of the

mark into the surface being found uncertain and unreliable.

It was to this abandoned means of identifying the plug, however, that Miller and Worley returned, and they succeeded in doing what the others had failed to do, viz.: they devised a method by which the distinguishing mark could be easily, cheaply and permanently impressed on the plug during the process of manufacture; and no sooner had they announced their invention than it went into general use, one large section of the trade using it under license and another section banding together to break down the patent.

Knowing as all now know, that *the way* to mark tobacco plugs is by means of indentation on the face of the "finisher," it is easy to generalize about the paucity of invention in such a device, but the appellees' own testimony and exhibits furnish a complete answer to such an argument, showing, as they do,—the desire of the American and English trade for a method of marking the plug, extending at least ten years back of the date of the patent,—the unsuccessful efforts of experimenters to devise a way of indenting a legible mark on the plug,—the instant and wide adoption of appellants' method when announced.

In the face of such a showing it is idle to contend that the devising of the successful process did not involve invention.

His Honor, Judge Baxter, while fully recognizing that previous experimenters had fallen short of the invention of appellants, and that their successful step in advance did involve patentable novelty, expresses surprise that the idea of marking the tobacco in the "finishing press," had not occurred to the experimenters. (p. 29). And the (to his mind) non-obviousness of this expedient is, as he states, one of the reasons which leads him to credit the story of the declared

an independent conception of the same idea, an attempt to so impress the word *Blackberry* was made in St. Louis, as early as 1867 or 1868, and E. F. Smith seems to have made a similar attempt to impress his own name in 1875, at Evening Shade, Ark. That the results of these efforts was not encouraging is to be unfailingly inferred from the fact that the plan never went into practical use.

Of Cope and Gibson we know nothing but that they took out these English patents.

An attempt was made to show that the *Blackberry* mould did and could make a permanent and practically useful mark on the plug; but the marked plug produced as showing the operations of this method of stamping the plug in the mould turns out to have been originally moulded without marks and not to have been put in the Blackberry mould until it was a year or two old, and as free from the elasticity of a freshly-moulded plug as a piece of putty. *Boyce*, p. 249, +Q. 37.

The use of the Blackberry mould, as it was used and was intended to be used, is shown by the complainants to be utterly inefficient to mark the tobacco. *Bates*, p. 125–6, Q. 8, p. 133; *Knight*, pp. 118 and 122.

Smith and Lee, who testified after this Blackberry bubble had been pricked and passed upon by the Court, do not pretend that their attempt to mark the plugs in the mould was successful, but, on the contrary, keep their new story on the impracticability of such a method (p. 822, Q. 37); and it can scarcely be now seriously pretended that plug tobacco can be on a manufacturing scale marked in the moulds.

Stadler's tag and Eaton's paper wrapper were then, in 1876, the only practical methods known to fix a trade-mark or name on the plug, the sinking of the

Supreme Court of the United States.

MILLER, *et al.*
vs.
FORBS, *et al.*

October Term, 1885.

No. 36.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

The invention of Miller and Worley was called forth by what the evidence shows to have been the long existing demand of the tobacco trade, for some means of affixing to a *plug* of tobacco a name or other identifying mark by which the manufacturer could be protected against fraud and the benefit of his skill and honesty secured to him.

In the *Baker* patent of 1874, (see answer, p. 8, Bates testimony, p. 180,) it is proposed to substitute a wrapper of paper for the ordinary tobacco leaf wrapper and to *print* upon this paper wrapper the name or trade mark of the manufacturer.

Mosher in his patent of 1873 (p. 228,) proposes to impress the trade mark on a metallic tag or label, one of which tags he presses into each plug.

Earlier, however, than either of these devices was the idea of impressing or indenting the trade mark upon the surface of the plug. (See Cope's patent of 1868, p. 216, and Gibson's patent of 1874, p. 230.) Both Cope and Gibson propose to stamp the mark into the plug in the process of forming or moulding it; and either from a knowledge of their suggestions or from

Washburn *vs.* Gould, 3 Story, 122.
Roberts *vs.* Dickey, 4 Fish., 532.
Smith *vs.* Hay, 6 Fish., 446.
Wood *vs.* Rolling Mill Co., 4 Fish., 560.
Patterson *vs.* Duffy, 20 Fed. Rep., 641.
Hawes *vs.* Antisdel, 2 Bann. & Ard., 10.

We say, therefore, in conclusion, that Miller and Worley have made a valuable invention, as disclosed by both original and re-issued patents. Appellees have adopted it bodily. They have raised a combination of manufacturers to take by force the invention they are unwilling to buy, yet are equally unwilling to give up. They have failed to show it in any of their prior alleged uses or patents. Appellants are entitled fully to the protection of this court.

JAS. A. BEATTIE,
ARTHUR STEM,
For Appellants.

1. The process is not the same, but substantially different, in the stage of the manufacturing in which the marking is done, and hence the result different as to permanency of mark.

2. Because the St. Louis plug was never a finished plug at all.

3. Because the devices are different. The block and inlet cast plate of Fisher are not the same as the compress plate, with the letters in relief, of Miller and Worley, the effect being altogether different, the latter producing the marking and finishing conjointly, the former intended to mark alone.

4. Because the Miller and Worley process produces a better result, viz: a marked and finished plug.

5. Because the patented process is greatly more economical.

6. Because the Fisher process, if anything, is nothing more than an abandoned experiment, from which the world derived no advantage whatever, while the patented process has gone into extensive use.

7. Because the marks made by that experiment were not permanent or ineffaceable.

8. Because there never was any public use of that experimental process.

As to the pretended suggestions to Worley and Miller, spoken of by Myers and Harris, we desire to say simply that the law is that even if the idea of an invention, and hints in respect to it, come to the patentee from others, still, if he was the first who gave to that idea a useful and practical form, his rights are not to be defeated. And that in point of fact, if the testimony of Myers and Harris were true, the alleged suggestions would have been of no aid to Miller and Worley, but would have really been misleading, as directing their attention away from the finisher, where only the marking could be made practically effective, to the mold, where it could not.

Bell *vs.* Daniels, 1 Fish., P. C. 372.

Roberts *vs.* Dickey, 4 *Ib.*, 532.

The defendants' proof, as to alleged prior uses, must be clear and convincing, and such as to remove all doubts as to the facts.

the improved iron molds, with polished inside surfaces, known as finishing molds, and the devices for marking were exaggerated resemblances of the devices of Miller and Worley. McCormick is foreman of Leggett & Meyers, a party to the combination fighting this patent; Delahunt is in the employ of defendants, both use complainants' process in their business exclusively.

Harris was recalled (Rec., p. 267) without leave, to show that Anton Miller had seen samples of the Blackberry tobacco. He does not say Miller ever saw the process of marking, or the Blackberry mold; but infers he knew how it was done. We say all this is untrue; and it is really of no importance.

In conclusion, we wish to add that twelve prominent business men, residents of St. Louis, all engaged in, or in some way connected with, the tobacco trade for years past in that city, to-wit: Edward D. Halthouse (Rec., p. 27), Gustave Miller (p. 31), Peter Hauptman (p. 33), John A. Belvin, Jr. (p. 38), J. J. Railey (p. 40), James H. Brookmire (p. 48), John A. Ladd (p. 51), Levi E. Taylor (one of the gentlemen to whom Boyce testified he had shown a Blackberry plug with a view to sell his house one hundred caddies of marked tobacco (Rec., pp. 245, 246), J. A. Heitkamp (p. 67), Max Fritz (p. 69), J. C. Kraft (p. 72), and Wm. H. Ryan (p. 73), all, except Ryan, testify that they had frequently seen and handled Boyce's tobacco, during the years he says he was putting marked tobacco on the St. Louis market; had opened the caddies and sampled and examined the contents; some of them, that they had visited his factory; and all of them, that they had never seen or heard of the Blackberry tobacco, or of any tobacco marked with an impression, until the Miller and Worley marked tobacco came out.

John K. Cahill was foreman for Boyce in 1870, and had never seen or heard of the Blackberry mold exhibited, or any tobacco stamped in that way. (Rec., p. 42.)

On this evidence, we say that the St. Louis plug does not anticipate the Miller and Worley invention, because—

Defendants have never attempted by experiment to show that plug tobacco, with a permanent, ineffaceable mark impressed in it, could be made with Defendants' Exhibit, "Blackberry Model" (mold). This they have expressly refrained from doing.

They have produced a plug. Defendants' Exhibit, "Boyce Plug," marked, not made by that mold. It was an old, dry, set plug when so marked. Boyce, as shown on cross-examination, purposely picked out the plug because it was old. Young Christian Peper told him this plug was a year or two old, and Boyce said to him. "Any *old* plug you have about the factory will do to produce up there" (that is, as an exhibit before the court), "that we can get an impression on" (Rec., p. 249); and then, although he admits the tendency of the tobacco to swell, and so obliterate the mark, he pretends that the mark would have been better on a fresh plug, because the stamp would have gone clearer and deeper, as he says, as if those shallow letters had not been pressed to their full depth into the old, set plug (pp. 250, 251).

And that old, set plug is the only example exhibited to the court to show the effect on plug tobacco produced by the Blackberry mold. It is utterly worthless for the purpose.

But complainants made some experiments with an exact duplicate of the Blackberry mold, and although they were very carefully made by a skilled tobacco manufacturer, who did not know their object, the result was to show that tobacco made and marked in those molds, as Fisher and Boyce made tobacco, would not retain an impression. (C. K. Loughridge's Dep., pp. 77-79; Robinson's Dep., pp. 94-96.) The Exhibits are in the case.

In reply, defendants put in evidence, respecting the experiments testified to by McCormick and Delahunt. But those experiments were not conducted in the Blackberry mold, or in any mold like it. It does not appear how the tobacco, especially the Delahunt tobacco, was prepared; nor can it be pretended it was similar in its preparation to the Fisher and Boyce tobacco. The molds used were probably

tobacco; and saw it worked; but he was with Boyce for only two or three months in 1869, in the very commencement of his career as a manufacturer, and gives so confused an account of Boyce's set of molds, as to show that the witness knows nothing definite about the matter. Loker admits the tendency of tobacco to swell (pp. 239, 240); and, besides, is a sued infringer of one of Miller & Worley's patents. George S. Shyrock (pp. 254, 255) says he saw some of the marked tobacco, but only saw a few samples in Boyce's hands, and knew so little about the matter as to suppose that all Boyce's tobacco was marked. George S. Myers (p. 255), another infringer, of this patent, is sworn to prove that Worley had knowledge of the Boyce marked plugs, and attributed the failure of Boyce to his using green tobacco, from which it would swell out, and not remain; but that by his finishing process it would stay. Myers admits that a pressman was present at the time, and this pressman, Wm. Regan, contradicts him as to the conversation. (Rec., pp. 56-57.) Besides, the specification of Miller & Worley's patent tends to prove that no such conversation ever took place; and Robinson proves that Finzer & Bros. used this invention in connection with the ordinary finishing process with entire success. (Rec., pp. 103-105.) The object of the Worley & McCabe patent, which is for "an improvement in manufacturing plug tobacco," was by means of finishing with heat in a finisher to get rid of the necessity of sweating and curing the plugs after mold pressure, by packing them in boxes, to be placed in a room for the tobacco to sweat and cure there. (*Def'ts' Exh'ts*, p. 228.) Myers admits the greater economy of the Miller & Worley marking invention in contest, and that he is an infringer, although he professes to sneer at the invention, which he uses, and will not give up. (R., pp. 256-258.) His firm once negotiated for a license under this patent (pp. 259, 260.) Adreon de Jong says he saw some of the marked tobacco, but does not specify how much (pp. 260, 261).

None of these witnesses testifies or hints that the impressions in the tobacco, which they say they saw, were permanent or ineffaceable.

supposed impression produced by it, just as Fisher & Harris had done, without taking the trouble to remove the block, after their crude experiment had proven unsatisfactory and unsuccessful. (Rec., p. 245.)

That set of molds, consisting of twelve frames, with the capacity of producing 180 plugs to the turn, weighing three or four to the pound, would, if that particular frame with the marked block in it was used, have made one marked plug to the turn. Those plugs were packed in twenty-pound caddies, and disposed of to the trade. It is clear that there was not one such marked plug to each caddy. There was only one such marked plug in about every forty pounds of tobacco. Boyce testifies he made about 5,000 or 6,000 pounds of tobacco with that set of molds. This would show that, by his own statement, he never made but about thirty pounds of the marked tobacco during his whole career as a manufacturer. (Rec., pp. 242, 243.) Boyce himself thought so little of the matter that he testifies that there was no particular place in the caddy for the marked plug to be put. (Rec., pp. 242-243.) The men to whom he alleges he showed samples of the marked tobacco are all dead or have disappeared, except Taylor (Rec., pp. 245, 246 and 54.) Boyce never succeeded in introducing or getting any one to take hold of the alleged marked tobacco. No public use of the process by which the supposed marked tobacco was made is shown or hinted at, even, either during the time of Fisher & Harris or Boyce & Brothers. Indeed, it is plain there never was any public use of the process; otherwise, Boyce would never, within the last year, have attempted, as he did, to get a patent on it, under assignment from Fisher, as the patent would have been worthless, when obtained, on account of this ancient, prior public use.

A. J. Jones (Rec., p. 231) is introduced to prove that the marked tobacco went into the trade. He was a shipping clerk, and will not swear that he saw more than three marked plugs; mere samples. C. C. Loker (pp. 234-241) attempts to show that he was familiar with the process of marking the

fifteen cells and blocks, and belonging to a set of molds consisting of at least twelve such frames, so that there were, in all, one hundred and eighty cells and blocks, capable, in one turn of the set, of producing one hundred and eighty unfinished plugs of tobacco, ready for the finishing process in the finisher. Fisher & Harris first began to experiment with that block, with the word "Blackberry" on it, about 1867, and continued their experiments until in 1868 or 1869, when they sold out their factory to Boyce & Brothers. That Fisher & Harris merely experimented in this matter, is evidenced by the fact that Harris, of that firm, who testifies for defendants, says distinctly, that he and his partner never sufficiently tested the thing to satisfy him of the permanency of the impression; and that, at the time of the sale to Boyce, he, witness, did not think they had done anything of any particular importance; that he didn't think it was finished then; and he thought that they hadn't completed the idea for which they were striving (Rec., pp. 253, 254). And E. M. Elam, who was the partner of Fisher in the tobacco manufacturing business, in St. Louis, subsequently to the dissolution of the firm of Fisher & Harris, and for about three years, from 1870, testifies for complainants, that, in that time, Fisher was experimenting, without success, in the marking of plug tobacco, not by the Blackberry experiment, which in fact he never mentioned to witness, but in other ways, as by a paper strip, with the firm name printed thereon, pressed into the tobacco.

Boyce & Brothers, after they obtained possession of that frame of molds (see Defendants' Exhibit, "Blackberry Model"—mold?), never made any change whatever in it. It remained in exactly the same state as when in the hands of Fisher & Harris; and Boyce & Brothers never made any other or different attempt to mark tobacco than that made by the first experimenters, Fisher & Harris; and, if they ever used it all, and giving the broadest effect to Boyce's evidence, they (Boyce & Brothers) went on to use that mold regularly in their business, from time to time, as they required six-inch tobacco, without any regard to that plate whatever, or to the

that the process was used publicly, we believe it sufficiently appears that there was no public use, but the matter is not left in doubt.

Adams *vs.* Edwards, 1 Fisher, 1.
Haselden *vs.* Ogden, 3 Fisher, 378.
Cahoon *vs.* Ring, 1 Cliff., 611.
Gayler *vs.* Wilder, 10 How., 496.
Ryan *vs.* Goodwin, 3 Sum., 518.
Morris *vs.* Huntington, 1 Paine, 348.

2. The devices or means employed are substantially different. The cord and cloth, which was used to prevent the cord cutting or breaking the wrappers of the plugs (Rec., p. 138), were employed for the purpose alone of giving the tobacco the coiled appearance, whence its name, without giving it any finish, and are not the equivalent of Miller & Worley's device of a compress plate, with devices in relief, which both finishes and marks the plug at one operation.

3. The Miller & Worley process, as has already been shown, is the much more economical of the two.

4. The resultant product is substantially different, inasmuch as that process produces simply a fancy brand, a rough twist or coil, without finish, while the patented process produces both a finished and a marked plug. As the rope has to be wound, only the appearance of coil could be given tobacco by that method. By the Miller & Worley indented compress plate any desired configuration can be given.

St. Louis Plug.

This use was an attempt, on the part of Fisher & Harris, of St. Louis, to mark tobacco in the molds, in the first or molding pressure. It is not pretended that any of that tobacco was "finished" and marked by one and the same pressure, by means of compress plates, with letters in relief. Nothing of that sort was ever done.

The device asserted to have been employed by Fisher & Harris—who are the alleged first users—was a cast brazen plate, let into the face of one block of a frame of molds, with

viz.: in "shape-mills," or molds (evidently Williamson's "sheet-mill"), which were shapes or molds divided into four compartments twelve inches square each, and from about two and a half to three inches deep, and were used with lids or covers, having blocks or followers, just in the same manner that molds with a greater number of cells of smaller size are used; that is, in sets of twelve piled on top of one another, to receive the pressure, and this notwithstanding Venable and Williamson had the regular finishers in their factory. The tobacco never saw the finisher at all.

The witness further testifies, positively, that the cable coil never received a finish at all, as that word is understood among tobacco men (Rec., pp. 138, 139, Ans. 14 21). This, indeed, is self-evident, for, even in the process as described by Williamson, it was impossible to "finish" the tobacco, because the finishing plates or tins could not, and did not, come in contact with the tobacco itself, but only with the cord and the cloth. For the purpose of finishing and marking the tobacco, it might as well have been pressed between boards, or in any sort of tobacco press, or even in a letter press, as between finishing plates, or in a finisher, enveloped as it was with foil, cloth, and cord. It was not desired to give a finish to the tobacco in that pressure, and no finish, if desired, could have been given; the tin-foil stood in the place of finish, and was left on the twists or coils when packed for the market.

The Petersburg coil, therefore, does not anticipate the Miller & Worley invention, because—

1. That use was a secret and not a public use.

It does not show any public use whatever.

There is not a particle of evidence that any one ever saw the tobacco made, that is spoken of by the witnesses, except those who made it. Owing to the secrecy that prevails among manufacturers, the impression would be very strong that it was not a public use, but that the parties kept their process secret. When there is added to the presumption of doubt, that exists from the fact that the defendant's attorney, with all his acumen, made no attempt whatsoever to show

finishing pot or mill, a square iron box twelve inches square, the "flat squares" being laid in the finishing pot, along side, edge to edge, with the cord on, then tin, then flat-iron (say sheet-iron about one eighth of an inch thick); then another layer, same way, and so on till the pot was filled; and then the whole was subjected to a heavy pressure of the screw pot. The tobacco was then taken from the finishing pot, the cord unrolled, the cloth taken off, and put into boxes, headed and nailed up for the market.

The witness also testifies that considerable quantities of this tobacco was sold in Chicago, Petersburg, and other markets of the United States.

Spicer and Jackson know nothing about the process thus described, but merely testify to having seen the product, like the plug, defendants' exhibit "Williamson."

It will be at once observed by the court that in defendants' evidence with reference to this use, there is nothing whatever to show any public use of the process by which the "cable coil" tobacco was produced.

The significance of this omission is explained by the testimony of William Loram, for complainants. Loram, who is a tobacco manufacturer of Petersburg, and was the foreman of Venable & Williamson from about 1865 to 1871, and first suggested to Venable the idea of making this "cable coil," and carried the idea into execution, testifies distinctly that the process was kept strictly private, and in effect that the use was a secret one (Rec., p. 139, Ans. 23).

Loram says the brand was simply a fancy article, got up to represent the Atlantic cable, then just completed, and he describes the process substantially in all respects as Williamson does, except that he states positively that the tobacco never went into the finisher at all, or at any time during the process of manufacture; that all three pressures, to which the tobacco was subjected, viz.: 1st. That by which it was pressed flat; 2d. That by which the edges were flattened; and 3d. That in which it was pressed enveloped in the tin-foil and cloth, wrapped with cord, were all given in the same apparatus,

ada, where their works were, showed them, in 1871, in the Tobacco Exchange at Richmond, Va., a "lump" of tobacco marked with an impression. Mills, in answer to the question, "what was the character of that mark?" says: "The letters T and B stamped upon the tobacco, and used gold dust; they looked like two gold letters T and B." Pace, answering a similar question, says: "The impression was made in the face of the lump by a die; I presume with bronze." This is the whole of it. Neither of the witnesses knew when, where, how, or at what stage of the manufacture the impression was made. No process is described. For all that appears the "lump" was not a "finished" plug of tobacco at all; and the impression may have been put on an old and well dried plug with a punch and mallet a long time after the lump was made. And, inasmuch as the factory of Tuckett & Billings was at Hamilton, Canada, the fair inference is that that lump was both made and marked, whatever may have been the mode of manufacture and impressing, in that country. That "lump," therefore, anticipates nothing in this case.

2. *The Petersburg Plug or Coil.*

The evidence as to this alleged use is contained in the depositions of J. P. Williamson, C. W. Spicer, and C. A. Jackson, for defendants (Rec., pp. 262 266), and in that of William Loram for complainants (Rec., pp., 137-141).

This use relates to a fancy brand of tobacco, styled by Williamson "cable coil," and by Loram "Atlantic cable coil," first made by James M. Venable, of Petersburg, about the year 1866. After his death, in a few years, Williamson succeeded to his business, and continued to manufacture the brand until about 1872, when he went almost out of the tobacco manufacturing business (Rec., p. 264, X-Ans. 9).

Williamson describes the process of manufacture as follows: The tobacco was first made into a round coil; then put into a "sheet" mill and pressed flat; then turned on edge and pressed into a square or flat square; then wrapped in tin-foil; then with a cloth; then with a cord; then it was put into a

wooden disks, but the name plates are not described, and the wooden disks can not give the smooth finish of a tin, but were intended to give a rough or uneven surface.

The Gibson patent shows a pressure in the mold only. The practice of the whole trade in using successive pressures —the practice of defendants in adopting it—the fact that it is universally used, where the tendency of tobacco to swell is to be overcome—shows that the method of Gibson and Kennedy can not be operative to make an ineffaceable mark.

But, to put the matter beyond doubt, we have had a careful experiment made by Mr. Robinson, Mr. Knight and Mr. Bates, the result of which is given in their evidence. (See Robinson, Ans. 44-52, pp. 95, 96; Knight, Ans. 15, pp. 121-123; Bates, Ans. 5 and 6, pp. 132-134.)

In their experiment they took a machine made exactly like that shown in the drawings, and carried out the process as directed in the specification, only more fully and completely, as they took name plates that were complete and perfectly adapted for marking, while none are described in the specification. They used a power greater than ever called for in making coil tobacco, and kept the mass under pressure for four times as long as ordinary. Nevertheless, the mark was not permanent, but by the swelling of the tobacco in the caddy was almost entirely obliterated, so as not to be discernible The exhibits are before the court.

There has been no attempt whatsoever to meet this evidence, and it must stand therefore, and standing, it shows that the Gibson & Kennedy patent discloses no operative process of marking tobacco. The patent fails as a reference, as the alleged St. Louis use fails, because the marking is done in the first and only pressure, and not applied after the tobacco has been solidified by the initial pressure.

ALLEGED USES.

1. *The Richmond Plug.*

Mills and Pace (Rec., pp. 266, 267) testify that Mr. Tuckett, of the firm of Tuckett & Billings, of Hamilton, Can-

wrapped around the plug of tobacco. (Knight, Rec., p. 120; Bates, Rec., p. 130.)

The Cope shows a method of pressing cavendish tobacco, by means of a stamp.

There is, however, no method of finishing tobacco shown there. There is no method of marking tobacco in the finisher, between metal plates with raised devices. There is simply a press with a plunger, for compressing cavendish by a momentary pressure.

If the tobacco trade desire to use this, we have no objection. We simply say it is not our process, and no one uses it or desires to use it. (Knight, p. 120, Bates, p. 130, 131.)

The Seidler patent simply shows a tin tag underneath the wrapper. The mark is an extraneous substance pressed into the tobacco. It is not a marking of the tobacco plug itself. This extraneous substance is put on while the bundle of tobacco is being formed in the first place, before it goes to the mold. There is no mark impressed into the surface of the plug during the process of manufacture, and especially none during the process of finishing.

Indeed, the plug never goes into the finisher. There is no compression between metal plates of the finisher. There is no compression between metal plates at all. It is not a "method of *finishing* plug tobacco." The tobacco has no finish.

Although, therefore, there is an identifying, ineffaceable mark affixed to the plug, there is no use of the Miller and Worley process. (Knight, p. 121; Bates, pp. 131, 132.)

The Gibson and Kennedy patent shows no method of marking plug tobacco. It is for a process of making coil tobacco, where the tobacco is put in, in a long coil or rope, and subjected to a single pressure with name plates, and between wooden disks.

A plug of tobacco could not be so made. It would be like the attempt of Boyce to mark it by one pressure in the mold, and which the case clearly shows could not be effectively done.

It is true that the specification shows name plates and

finisher, they never gave the tobacco but one pressure, they did not use the molds, but as soon as it was shaped (or rolled) it was put right in the finisher. The finisher can be used to press the tobacco without the molds. It can be made in that way much quicker and easier, and cheaper, and will answer, perhaps, quite as well for making the rough unfinished goods Smith produced. We think, therefore, we are entirely warranted in concluding that Smith and Lee never used or understood, or even conceived our *process of finishing and marking tobacco plugs, with an ineffaceable indentifying impression by one and the same pressure, by means of compress plates, with devices in relief, whereby the tobacco takes its permanent set, with the impression in it, and in a finished state, the tobacco having been prepared previously by receiving a forming pressure in the molds.*

This is what complainants described as their invention in their original patent; it is what they have set forth in their re-issue; it is exactly what defendant uses; it is not found in one of the alleged references.

Ours is a process patent, and, to be a reference, the anticipating patent or use must show the described process of the patentee. This has not been, and can not be done.

PRIOR PATENTS

We will briefly revert to the other alleged anticipations before the court below, and which were there held to be entirely different from our invention. We merely discuss them for the convenience of this court should it deem it necessary to examine them.

Not one of those alleged references, except Seidler, has ever gone into any use. Not one of them could be used.

The Clarke and Gerard patents simply show methods of impressing a mark into a homogeneous article, as soap or a button, in process of making, and have no possible connection with this case. (See Knight, Ans. 9-11, pp. 118, 119; also, Bates, pp. 128, 129.)

The Eaton patent simply shows a printed label, that is

190), that the Smith plate used on hand-made plugs would cut the wrapper and cause the plug to bleed, and destroy the plug. Smith's plugs were all hand made, he had no plug machine. We do not, however, admit that Smith ever used the plate in the finisher, after having first pressed the plug in the mold, so that it would take its final set with the marks in it. Both he and Lee testify that he did not, and we think that it is just here that his Honor, Judge Baxter made his mistake. He says in his opinion (Rec., p. 21), "if then said plate was made at the time, and for the purpose mentioned, it follows as the night follows the day, beyond all reasonable doubt, that it was so used." The plate was made. as expressly stated by both Smith and Lee, for use in the molds. Judge Baxter had already held that marking in the molds by the "Blackberry" plate, was not our invention for the reasons already given. The mark was not made in the finisher after the forming pressure in the molds, so that the tobacco was "finished" and marked simultaneously, so as to receive the mark and final set at the same pressure. It not only does not follow as the night the day, that it was so used by Smith and Lee, but they both unite in saying that after they got the finisher, the tobacco had no "finishing" pressure, it had but one pressure, whether that was in the mold or finisher makes no difference, the mark will not stay, the plug will swell and destroy the mark, even if the plate did not cut the wrapper. Lee says himself "in the molds it can't be done successfully." (P. 321.) "In the molds it (the mark) did not last." (Page 322.)

"You see the impression can be made in the finisher after the work is made solid." (P. 326, Ans. 41.) Of course it can, because the tobacco then receives its final set, simultaneously with the finish and marks, having been first solidified in the mold. Lee had learned the secret of its success after he left Arkansas. He did not know it when he visited Miller & Worley's factory on his return to St. Louis. His remarks at that time show this clearly. He never knew this while at Evening Shade, but says repeatedly when brought to this point when off his guard, as does also Smith, that after they got the

But let us look at appellees' position in this matter; suppose we admit everything that they claim.

Smith and Lee both testify that after the finisher was procured they never used the plate in the molds again, but put the plugs, as soon as formed, right in the finisher, and subjected them to but one pressure. (Smith, p. 305, Ans. 25; Lee p. 332, Ans. 128.)

But suppose we admit, what there is no evidence whatever to prove, that Smith formed his plugs, pressed them in his molds, then gave them a finishing pressure in the finisher. when he used his plate for marking; even then it would have been a failure, first, because it would not have made an ineffaceable mark; second, because it would have cut the wrapper and destroyed the plug, or made it unmerchantable.

It has been shown that to make good, merchantable plug tobacco, that will not swell when exposed to the air, it must be subjected to a pressure in the molds of from 4,000 to 8,000 pounds to the square inch, and something less in the finisher. (Robinson, p. 103. Drummond, appellees' witness, p. 348.) This can only be done practically by an hydraulic press. Smith had no such press. He used simply an ordinary screw press, worked with a lever, and generally had to call in a neighbor to help press his tobacco. Such a press is absolutely incapable of producing a finished plug with an ineffaceable mark.

Again, he made almost entirely dark navy tobacco, that is heavily sweetened, and all hand-cased. (See depositions of Lee, Davidson and Smith.)

Defendants' own expert, Drummond, testifies that such tobacco, if pressed in the mold or finisher with the Smith plate, the letters would cut through the wrapper, the sweetening ooze through the wrapper, fill up the marks, obliterate the name, and cause the plugs to stick together when packed, and be torn when pulled apart. (Pp 347, 348; see also testimony pp. 195, 196, 197 and 190.)

Mr. McCalley, a tobacco manufacturer of long experience, who made 1,500,000 lbs. the year before he testified, says (p.

embryotic or inchoate; if it rested in speculation or experiment; if the process pursued for its development had failed to reach the point of consummation, it can not avail to defeat a patent founded upon a discovery or invention which was completed, while in the other case, there was only progress, however near that progress may have approximated to the end in view. The law requires not conjecture, but certainty."

It is, perhaps. needless to quote authorities to this court which has made the law so far as it exists outside of the statutes, and has frequently and fully interpreted them. But we think it will hardly be contended that our position is not correct when we claim that—

"However suggestive experiments of others may have been, they can not be made available to defeat a patent granted to one, who, after all the experimentors had failed to secure a practical and successful result beneficial to the community, and a valuable contribution to the useful arts, first succeeded so as to be able to disclose to the public a practically useful and successful process, by him brought to perfection, and first made capable of useful application."

United States Nickel Co. *vs.* Anthers, 5 Fish., 523.

Allen *vs.* Hunter, 4 McLean, 321.

Whatever Smith and Lee did. they never produced a practical or useful result. They never marked tobacco with an ineffaceable impression, they never made what is understood in art as finished tobacco. They never contributed anything to the useful arts. And there can be no doubt that they abandoned what little they had accomplished. because it was a failure.

"Where there had been no satisfactory trial of prior machines, and the persons interested in them laid them aside for years, and thus indicated a judgment against their practical utility, the Court but enforces a logical sequence in assigning them to the category of unsuccessful and abandoned experiments"

Parham *vs.* Button Hole Co., 4 Fish., 469.

Gaylor *vs.* Wilder, 10 How., 477.

Allen *vs.* Hunter, 6 McLean, 303.

factory, in 1875-76, and would have known or heard of his marking tobacco, had it been done. He never did.

James B. Hughes testifies that in the fall and winter of 1875, he was keeping the hotel across the street from Smith's factory, at which Lee boarded; was usually in the factory twice a day, and would help Lee and Smith put down the press, and stand around and see them work the press and finisher, and take the tobacco out of the finisher and the molds, but he never saw a marked plug or heard of one. From his relations with Smith and Lee, he is sure Lee would have spoken to him about it if he had been making any tobacco with marks on (Rec., pp. 160-165).

J. B. Atkinson worked for Smith at different times, but not in 1875; was frequently in the factory during the winter and spring of 1875, helping around at the press; knew Lee well; never saw or heard of any tobacco being marked; would have known it if it had been done. (Rec., pp. 168-170.)

Is it upon such evidence as this, that a valuable patent is to be destroyed?

The Circuit Court held the patent invalid upon the authority of Coffin *vs.* Ogden; we are unable to see any analogy between the two cases. In Coffin *vs.* Ogden, the court says: "The patentee made his invention in March, 1861. That Erbe made his invention in January, 1861." "*This was not controverted by counsel for appellant;* but it was insisted that the facts touching that invention were not such as to make it available to the appellees, as against the later invention of Kirkham, and the patent founded on it."

The facts in that case being admitted, or *abundantly* proven, it became purely a question of law, whether they were sufficient to defeat the patent. In this same case of Coffin *vs.* Ogden, the court says:

"The invention or discovery relied upon as a defense, must have been complete, and capable of producing the result sought to be accomplished; and this must be shown by the defendant. The burden of proof rests upon him, and every reasonable doubt should be resolved against him. If the thing were

run the press, and packed the plugs in the caddies, and are sure they must have known it had Smith or Lee marked tobacco with a name; they never saw any so marked, and never heard of it. (Rec., pp. 170, 171.) *It could not have been done* as claimed, without their knowledge.

Every merchant in Evening Shade was examined. They all bought and sold Smith's tobacco in 1875; not one—except Davidson and Metcalf, to whom Smith showed his experimental plug marked in the mold — ever saw or heard of any marked tobacco made or sold by Smith.

In a little village of 150 inhabitants in the mountains, it is hardly possible that no one except Smith and Lee should have known or heard of this thing, if it had been a success or had been used even to a slight extent.

John Wilkinson, a tobacconist, was frequently in the shop assisting, in the fall and winter of 1875, at the press, or talking; he never saw a marked plug, or heard Smith or Lee speak of such a thing. (Rec., pp. 150 and 151.)

R. E. Huddleston, employed in the office of the clerk of the court, located about twenty yards from Smith's factory, was frequently in Smith's factory in the fall and winter of 1875, and saw him handling the tobacco in the molds and finisher, but never saw or heard of a marked plug. (Rec., pp. 152 and 153.)

D. N. Huddleston, justice of the peace, was frequently in Smith's factory in the fall and winter of 1875; saw him making tobacco; went there for that purpose; he never saw or heard of Smith marking a plug; he could hardly have helped knowing or hearing of it if it had been done. (Rec., pp. 155 and 156.)

Calvin J. Wilson says he was Judge of the County Probate Court in 1875-76. The court-house was twenty yards from Smith's factory; he was in the habit of going into Smith's factory frequently, and on these occasions saw the tobacco in process of manufacture; never saw a marked plug. (Rec., pp. 157 and 158.)

Wm. M. Davidson, an attorney, was occasionally in Smiths'

tion for truth and veracity, at different places, say it is very bad:

M. W. Wright, p. 147.
J. S. Wilkinson, p. 150.
Chas. Evens, p. 172.
Wm. Kemper, 175.
Niel Stewart, 177.
J. A. Warden, 179.
F. Stewart, 184.
J. W. Bame, 185.
C. D. Bunnet, 202.

He is shown by these witnesses to be an utterly worthless vagabond, just the kind of a rascal to be used as a confederate by Smith for defrauding the government, or for any other fraud in which there promised any profit.

But we are not left to rely upon the contradictions and inconsistencies of this pair of scoundrels alone to prove our position that the Smith use was an unsuccessful experiment, and was abandoned as soon as its trial proved it a failure.

Aside from the plug Huddleston saw, which he is unable to describe, or say whether it was a finished plug or not, the only plugs ever seen were the experimental plug made in the mold, with the wrapper cut around the edges of the letters, which Smith showed Davidson soon after the plate was made; and Mr. Smith showed Metcalf, a merchant at Evening Shade, as something he was experimenting on, and who says he thinks he can say, from his own knowledge of Smith's business, that aside from that experimental plug, Smith never manufactured tobacco marked with his name (Rec., pp. 146, 147). Both these plugs—if they were not the same—were marked in the mold soon after the plate was made; they were the first, and probably the last, Smith made.

The only workmen in Smith's factory beside himself and Lee, were two young men, the Gadd boys, and a negro, Pete. Pete has not been produced, but both the Gadds have, and they say they were working for Smith at the time Smith claims to have done this marking; they stemmed some, helped

to see how they worked, and I showed him how they worked." Lee says there were seven plates, and he used them as far as they would go. Smith and Davidson both say there were not more than two; they are only sure of one.

He says again (*X-Q.* 21, p. 324), that he marked the plug in the mold with the plate, and then when he got the finisher, he transferred the plug with plate still on it to the finisher. In *X-Q.* 37, he says, after he got the finisher, he never used the plate in the molds any more.

He contradicts himself on this point several times, and finally, on redirect (Ans. 128, p. 332), says, that after he got the finisher, he did not use the molds at all. Smith also says (Ans. 25, p. 305) that after he got the finisher, nothing was done to the tobacco before it went into the finisher; "after it was shaped (that is formed into a plug), it went right from the shaper into the finisher." This, of course, was giving the tobacco but a single pressure, and it is not our process, and, as is amply proven, will not make an ineffaceable mark or a finished plug.

Lee says (Ans. 29, p. 325):

"When I got the finisher and twelve-inch square tins, I told him, says I, get the names printed across here raised, and, says I, we will make a success of this and patent it. He agreed to patent it with me. Smith agreed to do this with me. Gentlemen, I'm under oath, and it is certain he agreed to patent that with me. I showed him the point after we got the finisher. Smith is not a tobacco man, and he don't know anything about the business; but I explained everything to him, and showed it to him fairly and squarely."

But Smith never did as Lee suggested, and never patented it (p. 327). It was never a success, never adopted in the business (Ans. 19, p. 308). Smith resumed business in 1877, but never marked any tobacco again (Ans. 140-143, p. 316).

Lee returned to St. Louis in 1876, and was at Miller & Worley's factory; he went into the press-room and saw them marking the tobacco by complainant's process; he talked with the pressman, an old acquaintance, about it, but never said a word of having tried it in Arkansas. (Rec., p. 334.)

The following witnesses, all acquainted with Lee's reputa-

But Lee is even worse than Smith, and we think clearly shows just what we contend for, that the plate if used by Lee at all, was used perhaps a few times in the molds or finisher, but was a complete failure and was thrown aside. His testimony is largely manufactured or padded from what he has snbsequently learned. It is full of falsehoods characteristic of such a witness.

He has been before this court before in the case of Worley *et al. vs.* the Loker Tobacco Co., all parties to this case. He then swore he quit manufacturing tobacco in 1874. His testimony was taken in 1877 (Record, page 334). He says in this case he reached Evening Shade at 2 o'clock exactly, by the watch, on July 22, 1865. (Record, page 319).

He knows the very hour. He left there on the evening of March 2, 1876, about dark (page 320). In Ans. 138, page 333, he says he left there on the morning of March 4. As a matter of fact he left between two days to escape his creditors. (Hughes' Dep. p. 165, Ans. 58.) He is always ready with a date or any other little fact that is needed.

He recollects going to Davidson's store one day, and having a conversation about this marked tobacco. Mr. Davidson showed him some from his stock, and he noticed the mark, E. F. Smith, in the plug, and called Mr. Davidson's attention to it, and said: "Here's that mark, it stays very well, don't it?" He gives the very words of the whole conversation, and says Mr. Davidson bought only one or two caddies of that tobacco while he was with Smith (Record, p. 326, Ans. 43-48).

Mr. Davidson testifies that he never bought a plug of marked tobacco, never saw but one, which Smith showed him as a result of the experiment (p. 317, Ans. 14; p. 319. Ans. 19). He never heard of the matter after that, and supposed the whole thing was a failure (p. 154).

He says he never saw tobacco marked with the plate (Rec. pp. 317, 318). Does not know anything about it.

Lee, however, with his usual fertility, fills this gap (Ans. 41, p. 322). "Mr. Smith of course told me he was going to have Davidson make them (the plates), and Davidson came up

sion, but in the circumstances of the case can hardly be held to materially discredit his testimony. He testifies, on pp. 261 and 262, that Smith made him a proposition, for a certain amount of money, to testify that his use of the plate was simply an experiment, and thrown aside as a failure; that such was really the fact, that it made a blubber and blister on the plug; when the plug got dry the wrapper would come off; that he never had been able to overcome that difficulty, and consequently threw it aside.

That he understood there was a large amount of money at stake, and he wanted to get some of it, and he thought Miller & Worley would be likely to pay more than the other side. His testimony can hardly be of much value after such admissions.

In his evidence, Smith says he never adopted the plate in his business to mark tobacco. (Ques. and Ans. 19, p. 308).

Again—

"70 *X-Q.* Now Mr. Smith isn't it a fact that this matter of yours was nothing more than an experimental use, that you never had regularly adopted it in your business at the time you broke up; isn't that a fact?

"*A.* Well, I don't know how far that would have to go."

He says in one place (X-Q. 16, p. 307) that Lee told him that the plate would cause blubbers and blisters on the plug by reason of the air getting in, while in Ans. 107, p. 313, he says that "he never heard of such a thing."

He can not name a single merchant to whom he ever sold a plug of marked tobacco. Every merchant in Evening Shade has been examined, they all bought Smith's tobacco, and not one ever saw a marked plug or heard of one, except one who saw the experimental plug shown to Davidson, which Davidson says was not a success, as the letters were rough at the edges,—that is the wrapper was cut, leaving feather edges to the letters.

Smith agreed if it was a success, to patent it with Davidson. (Rec., p. 154). Davidson says he regarded it as a failure, and never heard of it again after Smith showed him the first plug, until he received a letter from Wicks & Co., relating to his testimony. (Page 154.)

subsequent events the witnesses have clothed with living flesh.

We believe that the plate was made, perhaps at the time claimed; that it was used in the molds, but was a failure for the following reasons: Because the tobacco will not retain the marks when made in the molds; second, because the edges of the letters as made would, and did, cut the wrapper and cause the plug to bleed and stick, the wrapper to come off, and the plug became unmerchantable; that it never was used in the finisher, except perhaps once or twice to prove its failure, and never made a *finished* plug; that it was abandoned and thrown aside after a few unsuccessful experiments; and that Smith never conceived or comprehended complainants' invention, or practiced it.

We have already reverted to Smith's character. On cross-examination, we think he fairly admits his offer to testify that his effort to use the plate was a complete failure and abandoned experiment, if he were paid for it. He admits (Rec., p. 314) that before leaving home he wrote Miller & Worley that he would be at the Laclede Hotel, St. Louis, on the 5th of March, a couple of days before the time he was notified that his testimony would be taken, and (p. 316) that on the morning his testimony was taken, he was at Miller & Worley's factory from 7 until 9 o'clock, waiting for some one to come in. Miller & Worley, however, knowing his character, did not care to have anything to do with him, but sent a reputable detective to the hotel in answer to his letter. He admits (p. 314, Ans. 117) that "he might have told the detective that he would like to make something out of his testimony, but did not name any amount"—that he wrote down certain figures; he says, however, "that they were just inferences—was left for him to take what they were for."

We can not say that we approve of or relish the employment of detectives for such work where it can be avoided, but the devil can only be fought with fire.

The detective who visited Mr. Smith was doubtless guilty of deceit, whether justifiable or not is not a part of this discus-

fate as Smith's, and was seized and confiscated by the government for fraud (Rec., p. 329). It is by the evidence of two such witnesses that the defendants succeeded in the court below in defeating this patent.

Smith testifies that in 1875 he plated his molds—he had no finishers—and discovered that the screw heads, which held the plates, left a mark in the plugs of tobacco, from which he conceived the idea of marking the plugs with his name, that he first cut out letters of sheet zinc and put them in the molds, but they did not make a sufficient impression. He then, in the warm weather of 1875, had a zinc plate made, and soldered to it the letters of his name in relief, which he used in the mould for marking the plugs with his name. In Sept. or Oct., 1875, he procured an old fashioned wooden-lined finisher, after which he used the plate in the finisher instead of the molds.

Lee testifies (Rec., p. 319) that he was foreman in Smith's shop, and in August, 1875, Smith brought him the plate referred to—he thinks there were seven of them, two, he is certain—that it was rough, and would tear the tobacco when he pulled it out; he had it smoothed up and beveled off, and used it in the molds for marking the plugs, but it was not satisfactory, and he told Mr. Smith the tobacco could not be successfully marked in the molds, but if Mr. Smith would get him a finisher "he could do it." A finisher was procured in the latter part of September, after which he "used the *plates in the finisher as far as they would go.*"

In confirmation of this, G. N. Davidson testifies (R., p. 316) that in the summer of 1875 he made the plate exhibit for Smith, and afterward Smith showed him a plug of tobacco marked about as such a plate would mark it.

F. Y. Huddleston testifies (R., p. 339) that about 1875 he purchased a box of tobacco of Smith for the hands on his farm, in which was a plug marked E. F. Smith, about as the plate exhibit would mark it, the box was also marked.

This seems like pretty formidable testimony in spite of the character of the witnesses, and we believe, as is usual in such cases, is partly true, a skeleton of truth which in the light of

lede Hotel, in St. Louis. He was then seen and interviewed, and stated that his use of this plate was unsuccessful and was abandoned; that it caused bubbles on the plug, and that he never could make it mark successfully, and threw it aside; that Foree, defendant, told him there were twenty manufacturers ready to pay $1,000 each to break the patent, and he (Smith) wanted to make some money out of it; that if the complainants would pay him a certain amount of money, he would make his testimony to suit them. (Rec., pp. 313, 314-316 and 200-202.)

The other witness to this use is R. E. Lee. His story was intended to corroborate Smith, but his deposition bears upon its face the marks of falsehood. He disagrees with Smith as to the number of plates, and repeats a conversation with Davidson about the marked tobacco, which, according to defendant's own testimony could never have taken place. (Rec., pp. 326, 327, 319). This witness is wholly unworthy of belief. Engaged at various times as tobacconist, policeman, fireman, street-car driver, saloon keeper, night watchman, detective, etc.; in all these occupations he left an unsavory record.

He is shown to be an habitual liar and an unmitigated scoundrel. Nine reliable witnesses who knew him and were acquainted with his reputation for truth, unite in saying it was very bad. He had been a witness in a former patent suit for some of the parties to the combination against this patent, and now interested in the defense, and was sent to Smith at Evening Shade, by Boyce Bros., witnesses for the defense, and parties to the combination against this patent.

He was in Miller & Worley's factory soon after his return from Arkansas, and saw them marking tobacco by this process and discussed with them its novelty, merits, and difficulties, but never said a word about having done it or seen it done before. (Rec, pp. 333-334). In a former deposition given by him in 1877, he swore that he quit tobacco making in 1874. He must have lied either now or then, probably on both occasions; his testimony is utterly valueless.

It is a suggestive coincidence that the only time he was in the tobacco business for himself, the factory shared the same

1st. Patents.—*a*, Clarke; *b*, Gerard; *c*, Eaton; *d*, Cope; *e*, Seideler; *f*, Gibson & Kennedy.

2d. Alleged Prior Uses.—*g*, Richmond plug; *h*, Petersburg plug, or coil rather; *i*, St. Louis plug; *j*, Evening Shade use.

It was held by the court below, both at the original trial and the rehearing, that none of these anticipations, save the Arkansas use, disclosed the process described and claimed in the patent. We will, therefore, first consider this Arkansas use.

ARKANSAS USE.

The proof of this Arkansas use is made by two witnesses, E. F. Smith and Robt. E. Lee, whose history and character are an important element in considering their evidence.

E. F. Smith had been living at Evening Shade, and was there indicted by the grand jury and prosecuted for keeping a drinking and gambling saloon. He had also been expelled from the Masonic fraternity for obtaining money dishonestly while treasurer of a lodge. (Record, pages 157, 158.) In 1874 he went to manufacturing tobacco at Evening Shade, a village in Arkansas, forty miles from the nearest railway, and reached by wretched roads (Record, pages 144–152), in a region where no tobacco of any account is raised, and dependent upon Missouri for stock (Record, page 144). He was entirely ignorant of the business, and his notion for selecting such a place to manufacture tobacco is perhaps made manifest by the fact that the government exacts a heavy revenue tax on manufactured tobacco, and that as soon as Smith and his confederate, Lee, quarreled, it was discovered that he had been making and selling tobacco without properly stamping it, and his factory and tobacco were seized by the government, forfeited, and sold by a United States Marshal. (Record, pages 308, 309, 346 and 156.)

This witness, before he went on the stand, sent word to the complainants, Miller & Worley, that he would be at the Lac-

sel, that since the twenty-ninth day of January, 1878, and prior to the filing of the bill of complaint herein, defendants, in their factory at Louisville, Kentucky, made and finished plug tobacco which they marked during the process of finishing, by impressing letters or other marks directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug. In carrying out the process of marking said tobacco, the defendants packed the plugs with alternate plates in the finisher, so that they took their permanent set with the impression in them, whereby the impression is preserved ineffaceable. The said plates had the letters which were designed to be impressed into the tobacco stamped therein.

And it is further admitted that the process used by the defendants was substantially such as described in complainants' patent, sued on in this case.

It is further admitted by the defendants that tobacco thus made by them was sold by them, the said defendants, after the 29th of January, 1878, and prior to the beginning of this suit, a plug of which tobacco is made an Exhibit herein, and marked "Exhibit Foree Plug," and identified by E. H. Rydall, Notary Public. This admission is made for the purpose of saving the expense of proof of the facts herein stated; and it is agreed that this admission may be filed in the case, and may be read in evidence with the same effect as if the facts herein stated had been fully proved by the evidence taken in accordance with the rules of court; and it is agreed that the complainants may file herewith, without offering before an officer of court, a certified copy of the patent sued on.

SAMUEL S. BOYD,
November 16th, 1878. *of Counsel for Defendants.*

ANTICIPATIONS.

Having endeavored to present to the court the nature of the invention, we will proceed to consider the only question raised below, viz.: The novelty of the invention.

A number of alleged anticipations were pleaded. They are:

Ans. 13-18; Ryan circular, p. 141; McCalley Rec., p. 188, Ans. 10-12.)

Under the decisions of the courts, these facts are ample evidence of the value and utility, and, we may add, of the novelty and patentability of this invention.

Pickering *vs.* Miller, 25 O. G., 89.

Smith *vs.* Glendale Elastic F. Co., 1 Holmes, 340.

Eppinger *vs.* Richey, 14 Blatch., 307.

Waterbury Brass Co. *vs.* N. Y. and B. Brass Co., 3 Fish., 43.

Brown *vs.* Deere, 21 Fed. Rep., 712.

Some of the advantages of the patented process are:

1st. It makes an ineffaceable impression or mark, which no other process has ever succeeded in doing.

2d. It produces a superior result, as the mark is made by the pressure, which brings to the surface of the plug the essential oils, and produces a fine finish.

3d. It binds the wrapper to the filler.

4th. It is more economical in its application.

5th. It is more economical, in that the manufacturer may use a cheaper grade of tobacco for the wrapper, which is merely ornamental, and does not affect the quality of the plug.

6th. It binds the laminæ of the plug more firmly together, and to that extent prevents the plug from swelling.

7th. The manufacturer can get a better price for his goods, and finds more ready sales. (McCalley, p. 188, Ans. 10-13; p. 90, Ans. 14.)

INFRINGEMENT.

There is no controversy on this point. The appellees have made the following stipulation (Record, pages 12, 13):

Filed November 29, 1878.

CIRCUIT COURT OF THE UNITED STATES,

For the District of Kentucky.

ANTON MILLER, CHRISTIAN WORLEY, AND JOHN FINZER, RUDOLPH FINZER AND NICHOLAS FINZER, Partners as JOHN FINZER & BROTHERS,
vs.
SAMUEL J. FOREE AND EDWARD J. FOREE, Partners as S. J. FOREE & Co.

It is admitted by the defendants herein, through their coun-

part of the plug, the quality of which depends on the filler—and thus greatly cheapens the cost of the product.

"18 *Q.* What effect has this marking and finishing of tobacco, with regard to the quality of the wrapper that may be used?

"*A.* It enables a manufacturer to work successfully a lighter and thinner wrapper, which he can buy much cheaper, as the pressure received at the point of indentation aids in keeping the thin wrapper firmly attached to the plug, and the marks improve the appearance of the inferior wrapper, and makes the goods desirable and salable

"19 *Q.* What office does the wrapper principally perform in plug tobacco? Is it for ornament, or for use, or for both purposes? Please explain its function.

"*A.* It is generally used solely for ornament, and is a detriment to the chew—the chewing qualities of the plug being in the filler.

"20 *Q.* What proportionate part of the cost of the plug does the cost of the wrapper that is used bear to the cost of the filler, as near as you can state?

"*A.* Fine wrapper, such as we work, costs from 40 to 60 cents per pound. Fillers would cost from 7 to 10 cents per pounds. One pound of wrapper, as we work it, would wrap about 9 or 10 pounds of filler.

"21 *Q.* Then the cost of the wrapper that is generally used on a plug is about three-fifths of the cost of the filler that is used, is it not?

"*A.* Yes. that is just what it is—six-tenths. In manufacturing, we generally add the cost of the wrapper to the filler." (Robinson's Dep., pp. 90 and 91.)

See Drummond's Dep., Ans. 20, p. 294.

Further, it is very much cheaper than any other suggested method in the apparatus employed, and in the ease and facility of applying. Robinson's Dep., Ans. 53-59, pp. 96, 97; Myers' Dep., X-Ans. 12-16, p. 257.

None of the patents introduced by defendants, nor the uses alleged by them, pointed out or showed any means or method for impressing an ineffaceable mark into the plug of tobacco; but upon the discovery of this process by Miller & Worley, and its application in the manufacture, it was immediately adopted by all of the leading manufacturers of the United States, as shown by the Record. Five of the largest companies in the United States took licenses under the patent, including P. Lorillard & Co., of Jersey City, the largest tobacco manufacturers in the world, while twelve large manufacturers combined to defeat this patent, and appropriate complainants' invention without compensation. (Ryan's Deposition, p. 74.

This witness is one of the largest tobacco manufacturers in the West. He was called to prove, by a list of experiments made for the purpose, that tobacco might be impressed with a lasting mark, in the molds, if left in for a long enough time. It would, however, leave the plug rough and unfinished, with feather edges; and after all his experiments he gave it up, and took a license under complainants' patent, and is now working under it. (Record, pages 289 and 295.)

See Loughridge's testimony, Ans. 8-12, Rec., p. 78; Robinson, Ans. 32, p. 93, Ans. 52-69, pp. 101-103; Knight, Ans. 8, p. 118; Bates, Ans. 3, pp. 125,126;—the two latter, experts; —witnesses for complainants.—And Loker, X-Ans. 61-63, pp. 239 240; Boyce, X-Ans. 99. pp. 250,251; McCormick, X-Ans. 81, 83-89, pp. 286, 287; and Drummond, X-Ans. 13, p. 294, witnesses for defendants.

Another advantage is that the marking of plug tobacco by the patented process tends to bind the laminae to the filler, and the wrapper and filler more securely together.

"15 *Q.* Is there any mechanical advantage in having a mark impressed into the plug of tobacco, like this word "Finzer" impressed into the surface of the plug which I now show you, and which is marked "Exhibit Finzer Plug?" If so, explain fully what that mechanical advantage is.

"*A.* I think it beautifies and adorns the plug as to its appearance and salability, and that it also aids in preventing the tendency of the plug to swell; the greater pressure received at the points of indentation aids in solidifying and tieing together the layers of filler, and attaching more closely the wrapper to the filler.

"16 *Q.* What effect has this binding together of the laminæ of the tobacco of which the plug is made up, so far as concerns the working in of air between the layers, when the plug is exposed?

"*A.* If the plug was made solid the air can't work in.

"17 *Q.* What injury does air do to the plug when it works in between the layers?

"*A.* If the plug swells, it becomes unsalable. I should think that the swelling of the plug was caused more by the elasticity of the tobacco than the air working in." (Robinson's Dep., p. 90; also Knight's Dep., Ans. 10, p. 119; Bates' Dep, Ans. 4, pp. 126-132.)

Again, it enables the manufacturer to use a lighter, and consequently much cheaper, wrapper—a mere ornamental

the case if the impression were made in any other way or at any other time.

"24 *Q.* Do you know why these efforts that you referred to failed to produce any practical result?

"*A.* I think all these attempts to place a mark on tobacco were done at the time they received their first pressure, and before the tobacco became solidified or 'set.' and the natural tendency of tobacco to swell, in addition to the pressure received while the manufacture was being completed, obliterated or made the mark imperfect.

"25 *Q.* How many and what pressures is a plug of tobacco subjected to in the ordinary process of manufacture? State fully.

"*A.* It is subjected to a severe pressure in the molds; from thence it is taken to the finisher and receives a lighter pressure; thence, from the finisher it is packed in boxes or caddies, and receives another slight pressure.

"26 *Q.* How is this first heavy pressure usually applied, and about what pressure per square inch is usually given?

"*A.* By hydraulic ram, and Finzer Bros. give it a pressure of four or five thousand pounds to the square inch. Other parties I suppose give it the same." (Robinson's Dep., Rec., pp. 91 and 92.)

Defendants' own witness, Drummond, testifies on this subject as follows:

"16 X-*Q.* Now, isn't it a fact that a piece of tobacco that has a smooth, hard-finished surface, will gather moisture from the atmosphere less than a piece of tobacco that has a rough surface?

"*A.* Well, a piece of tobacco that has a rough surface, that has not been finished when packed in the box, if allowed to remain, the wrapper will start from the filler and leave the filler. If it is allowed to remain under pressure a long time, or remain in the box some length of time, the wrapper takes a set to the filler, and will not start from it by exposure afterwards.

"17 X-*Q.* Now, isn't it a fact that the pressure of indentations into the face of a plug tends to unite the wrapper to the filler?

"*A.* There is no question about that in the world; the indentations passing into the face of the plug.

"18 X-*Q.* Doesn't that, to a certain extent, overcome the tendency of the wrapper to separate from the filler?

"*A.* That overcomes the tendency of the wrapper to separate from the filler, and to prevent the whole mass from swelling.

"19 X-*Q.* Does it not bind the laminæ of the tobacco that make up the plug more firmly together?

"*A.* There is no question about that. If you take and press a number of indentations into a plug on one side, or both sides, that it has a tendency to solidify the tobacco to a greater extent than if there are no indentations." (Rec., p. 294.)

Admitting that the added claim in the re-issue was invalid, the first claim being substantially the same as in the original patent, is, according to the later decisions of this court, good and valid.

Gage *vs.* Herring, 107 U. S., 640.

Mahn *vs.* Harwood *et al.*, 30 O. G., 657.

UTILITY AND VALUE.

The record in this case, by reason of the efforts upon the part of defendants to prove anticipations of the invention, is full of accounts of unsuccessful attempts to accomplish the end sought and secured by this invention. That it was long a serious want in the business is fully shown by the testimony of Robinson and other witnesses.

"12 *Q.* State if you know what, if any, trade advantage there is in having plug tobacco marked with an ineffaceable identifying name or trade-mark. Explain fully.

"*A.* It is essential to the success of any manufacturer who makes fine goods. Before we had identifying marks on plug tobacco, the jobber who bought direct from the manufacturer, for the sake of making a larger profit, was continually trying to substitute and palm off inferior goods to the retailer. The retailer, on his part, for the same reason, after he had sold out one box of fine tobacco, would slip inferior tobacco into the box that had the brand or label on of the fine tobacco, which he had been selling, and hand the inferior tobacco to his customers as the same goods they had been buying. The consumer, finding his tobacco was not so good, and believing it to be made by the same manufacturer whose goods he had liked, got disgusted, thought the manufacturer was willfully running down his goods, and refused to buy them again. In fact, it was a substitution all through the trade of cheap and inferior goods for the sake of more profit, in place of an established brand of fine tobacco, which forced the manufacturer to make cheap tobacco to try and meet this state of affairs, and injured greatly those manufacturers who had the knowledge and ability to make fine tobacco." (Robinson's deposition, Int. and Ans. 12, page 89. Record.)

Besides the importance of it, and the advantages of the invention recited by Robinson, it is the only method of marking plug tobacco that produces an ineffaceable mark. The impression being made at the same time that the tobacco receives the finishing pressure and its final set, the mark will not be obliterated by the swelling of the tobacco, as would be

permanent set with the impression in them, whereby said impression is preserved ineffaceable."

They then refer to a former patent, as in the original, and add, as in the original:

"But this system of marking may be used in conjunction with the ordinary finishing process, by having the device in relief on pressure plates used in the last pressing."

They then add, as in the original:

"Our preferred manner of stamping the letters on the plates, A, is by stamping them therein, and then making the letters solid by filling in the concave side of the letters with melted metal, such as solder."

They claim—

"The *described process* of marking plug tobacco, which consists in impressing letters or other marks directly into the side of the plug, during the process of manufacture, and by the pressure employed in making the plug, substantially as described."

It will be observed that while the language of the claim of the re-issue differs somewhat from that of the claim of the original, these claims, viewed in the light of the specification, are for identically the same thing, and considered with reference to the authorities, are to be so construed. The language of the claim is to be limited by the specification, according to the description of the invention therein given by the patentee. Such phrases in the claims as "described process" and "substantially as described," throw them back to the specification for qualification, and so, even where such phrases are omitted.

The Corn Planter Patent, 23 Wall., 225.

Seymour *vs.* Osborne, 11 Wall., 516.

Hailes *vs.* Van Wormer, 20 Wall., 553.

Sugar Refinery Co. *vs.* Matthieson, 2 Fish., 600.

The manner of carrying out the process is described in the same language in the specification of both the original and re-issue, as follows: "The plugs are packed with alternating plates in the finisher, so that they take their permanent set with the impression in them, whereby said impression is preserved ineffaceable."

A′, is by stamping them thereon, and then making the letters solid by filling in the concave side of the letters with melted metal, such as solder, etc. . . . This system of marking may be used in conjunction with the ordinary finishing process, by having the letters in relief on pressure plates used in the last pressing. We claim the mode of simultaneously stamping and finishing tobacco, consisting of tightly pressing the plugs between plates having letters in relief, in alternating series, substantially in the manner described." (Record, page 142.)

RE-ISSUE.

This patent was issued Dec. 5, 1876. On Dec. 29, 1877—only a year and a few days later—the patentee applied for a re-issue, which was granted January 29, 1878. (Record, page 25.)

It was not contended below at the hearing that there was any difference between the invention described and claimed in the re-issue, and the invention described and claimed in the original, and we think there can not be. The specification and first claim of the re-issue are substantially the same as in the original patent. A second claim was added in the re-issue, which, however, was abandoned and disclaimed, and is not in issue in this suit.

For the convenience of the court we add here an abstract of the re-issue, from which it will be seen that the invention described and claimed is the same as in the original.

The specifications are almost identical. In the re-issue the specification proceeds: "Our improvement consists in pressing into the side of the plug, during the process of manufacture, letters or marks so as to be ineffaceable." "The main object is to enable consumers to identify the plug of tobacco of any manufacturer, after it leaves the hands of the latter. . . . A is a plug of tobacco, and at B are shown letters impressed in the side of the same. A′ is the compress plate, having, at B′, letters in relief, by which the impression at B is formed. *In carrying out our process, the plugs are packed with alternating plates, in the finisher, so that they take their*

add to the finished appearance of the tobacco, being given in this way by the finishing plate, and that it would, at the same time, be an entirely inexpensive process of applying a mark to tobacco. While this may seem a simple and apparent method, it had never been used before, and was the first successful effort to produce an ineffaceable mark, though the record shows a multitude of failures.

It was found, that by means of a male and female die made with the marks, that it was desired to impress into the face of the plug, one of the smooth tins ordinarily used in the finisher being placed between the dies, and subjected to a moment's pressure could be inexpensively converted into a marking plate.

At first, Miller and Worley seemed to have thought it necessary to imbed the back of the tin with solder; but, by practice, this was found not to be required, and the tin, as it comes from the die, is in shape to produce its mark.

This is the invention.

In the original patent it is thus described:

"*Patent for improvement in* FINISHING *tobacco plugs.*

"Be it known that we," etc., "have invented a new and useful method of marking tobacco plugs. . . . Our improvement consists in pressing into the broad side of the plug, during the process of manufacture preferably, letters or other signs, so as to be ineffaceable.

"The main purpose is to prevent false marking of plug tobacco after it leaves the hand of the manufacturers. A is a plug of tobacco; at B are shown letters impressed in the broad side of the plug; A′ is the compress plate, having, at B′, letters in relief, by which the impression at B is formed; . . . the plugs, in finishing, are packed with alternating plates in the finisher, so that they take their permanent set, with the impression in them, so that said impression is ineffaceable."

They then refer to a prior patent that may be used in carrying out their process.

"Our preferred manner of forming the letters on the plate

perfections with which they come from the molds, hardens and solidifies them so as permanently to "set" the tobacco, destroys all tendency in it to swell or puff up, and, by bringing the essential oil of the tobacco to the surface, gives to the plugs the smooth gloss finish, and appearance necessary to good workmanship.

The "finished" tobacco plugs are packed from the finisher into caddies or boxes, subjected there to a comparatively light pressure, the packages headed up, marked, and stamped, and are then ready for the market.

(Robinson's Dep. Ans. 8, 17, 25-31¾, 35 and 36. Rec. pp. 89, 90, 92 and 93. Loughridge Dep.. Ans. 6; X-Ans. 6-10, 28-30; R-Ans. 8-12; pp. 77, 78, 80, 81, 82, 86 and 87.)

From this view of the art, it is evident that in the ordinary and usual way of preparing plug tobacco for the market, it undergoes three successive pressures, viz., two manufacturing pressures, the first a shaping or molding pressure, the second a "finishing" pressure, and one packing pressure, the object of which last is not to fashion or "finish" the plug, but merely to pack it properly into the packages in which it is to be offered for sale.

The invention here has relation to the finishing pressure, that is, the last pressing received by the plug during the process of manufacture, and by which the making of the finished plug is completed. At this stage of the process, the inventors, utilizing the fact that in the "finishing" the tobacco receives its permanent set, together with a hard, smooth surface, and is thereby deprived of its tendency to swell, mark the plug by the same pressure that "finishes" it, by means of devices in relief on the ordinary compress plates, thus producing an ineffaceable impression.

Miller and Worley discovered that by properly indenting their finisher tins with such marks as they might desire, they could reproduce these marks on the surface of the finished plug of tobacco, and that, in such way as to make the mark permanent by reason of its being given at the time the tobacco took its permanent set in the finisher; that this mark would

The molds are rectangular frames, divided into cells—say fifteen to eighteen in number—of the size of the plugs of tobacco proposed to be made, and accompanied by lids or covers of like dimensions, carrying blocks or followers, corresponding in number with, but slightly less in size than the cells, and the office of which is to fit into the cells and to press the rolls or masses of tobacco therein, when a frame of molds and its cover are operated together. In practice, the rolls or masses of tobacco to be pressed are placed in the cells, the cover with the blocks adjusted to them, a number of molds (ten or twelve) thus prepared, piled one upon another, and the whole subjected to a heavy pressure, often four to eight thousand pounds per square inch being applied, generally by means of a hydraulic press, and of about an hour's duration, or less, in press of work. From this heavy pressure in the molds, intended to give form and compactness to the tobacco, the plug comes with feather edges, owing to the impracticability of fitting the blocks perfectly to the cells, and with a rough, unfinished appearance, and a tendency to swell up, not having taken its final set, and thus lose its form and become wholly unmerchantable. To remedy these defects, and to "finish" the plug, the pressure in the finisher is employed. This is an iron box, open at top, closed at bottom, square in its inside horizontal section, which is of a size adapted to the plugs to be made, and with polished inside surfaces. In using the finisher, a square tin compress or pressure plate is placed inside on its bottom, and of a size matching therewith. On this plate, and covering it, is placed flat a row of tobacco plugs as they come from the molds; on these a similar compress plate; on this a stiff metal plate of corresponding size; on this another tin compress plate; on this another row of tobacco plugs; and so on, alternating until the finisher is filled to the top. Pressure considerably lighter than that in the molds is then applied, and continued from about an hour to an hour and a half.

The effect of this secondary pressure between compress plates or tins, is technically to "finish" the tobacco plugs; that is, it rids them of the feather edges, roughnesses, and im-

tobacco softened by moisture, sweetened and flavored, and rolled or pressed into lumps, and covered with a wrapper.

Tobacco is a very porous substance, and when moistened and ready for working it is also very elastic. The mass, being made up of thin laminæ, and in this porous, elastic condition, requires a great deal of pressure to solidify it and make it compact.

If this pressure is suddenly applied and removed, the tobacco, by reason of its porosity and elasticity, swells and tends to resume its original shape. The porous mass, when it goes into the molds, has particles of air within it which require to be pressed out.

Were the mass homogeneous, instead of being laminated, porous, and elastic, there would be little difficulty in impressing an ineffaceable mark upon it, as is found in the numerous instances of marking soap, chocolate, or the face of glass buttons, when the glass is in a molten or semi-molten condition; but, made up as tobacco is, some method was required by which it could be marked in such a way as to retain the impression, so that swelling would not obliterate it.

Plug tobacco is of two sorts, "hand-cased" and "dipped." The first is prepared by spreading the leaves thinly over the floor or casing box, and sprinkling the sweetening, usually a flavored compound of sugar and licorice, over them with a casing-broom or sprinkling-pot. "Dipped" tobacco is immersed in a vessel containing the sweetening, and run through a wringer of soft rubber rollers, to distribute the sweetening more thoroughly through the leaf, and to remove the superfluity. The plug itself is composed of two parts, the "filler" in the inside, and the wrapper surrounding it, and is inchoately made in one of two forms; that is, either by hand into a cylindrical lump or roll, or the filler is matted together in a plug machine, cut to the required size, and then incased in the wrapper, thus presenting to begin with, a mass of flat shape. The roll or flat mass thus formed is then subjected to two pressures: firstly, in the "molds," and secondly, in the "finisher," "finishing-box," or "compress," for it is known in the art by all these names.

The invention covered by the letters patent sued on, is a process for finishing and marking tobacco plugs with an ineffaceable impression by one and the same pressure, by means of the finisher plates having devices in relief whereby the tobacco takes its permanent set with the impression in it, and in the finished state, the tobacco having first received a forming pressure in the mold. The first claim of the patent is—

Infringement was admitted by defendants. (Stipulation, Record, pages 12 and 13.)

The various defenses made by the answer—want of title—invalidity of re-issue—non-infringement—were not insisted upon by defendants, and never raised in the argument below, the sole defense being want of novelty by reason of the alleged anticipations. The alleged anticipations were:

"The described process of marking plug tobacco, which consists in impressing letters or other marks directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug substantially as described." (Record, pages 25 and 26.)

1st.—Prior patents, to-wit: Clarke, Gerard, Eaton, Cope, Seidler and Gibson & Kennedy.

2d.— Alleged prior uses: the Richmond plug, the Petersburg cable coil, the St. Louis Blackberry plug, and at the rehearing, the Arkansas use.

The court found for the complainants as to all these alleged anticipations, except the Arkansas use.

ASSIGNMENT OF ERROR.

The Circuit Court erred to the prejudice of appellants in this cause—

In holding the letters patent sued on to be invalid because of anticipation by the alleged prior knowledge and use by E. F. Smith, and R. E. Lee, at Evening Shade, in the State of Arkansas, as set up in the supplemental answer of appellees.

ARGUMENT.

In order to intelligently discuss the question of anticipation, it is necessary, first, to understand the subject of the patent, which relates to the manufacture of plug tobacco—that is,

counsel before his Honor, Judge Baxter, and on October 15, 1879, an interlocutory decree was entered in favor of complainants, sustaining the patent as to the first claim*—and adjudging the defendants infringers of said first claim, and awarding an injunction and reference to a master for an account of profits and damages. (Record, page 14.)

Afterwards, on the 23d of February, 1881, upon motion of defendants, leave was granted them to file a petition for a rehearing, upon the ground of newly discovered evidence. (Record, page 15).

The petition was then filed, and rehearing granted, and the interlocutory decree vacated (Record, page 15), and thereupon the defendants filed a supplemental answer, setting up an anticipation of complainants' invention by an alleged prior knowledge and use by one E. F. Smith, and one R. E. Lee, at Evening Shade, in the State of Arkansas. (Record, page 17).

Issue was then joined by the filing of replication by complainants, and afterwards the case came on to be heard upon the proofs and arguments of counsel, and on the 3d day of January, 1882, the court filed an opinion reiterating the former finding, and holding that so far as the record showed at the first hearing the letters patent were valid and infringed by defendants, but that defendants had proven an anticipation by the knowledge and use of said E. F. Smith and said R. E. Lee, at Evening Shade, Arkansas, and adjudging said letters patent invalid by reason of said anticipation, and directing a decree dismissing bill at complainants' costs, which was thereupon entered. (Record, page 18.)

Afterwards, on the 10th day of March, 1882, the case came on to be heard on a motion by complainants for leave to file a petition for a rehearing, which motion was overruled (Record, page 22), and complainants duly prayed an appeal in open court at the time the decree was rendered, which was allowed (Record, page 18) and on the 28th day of February, 1882, executed and filed their appeal bond. (Record, page 22.)

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*The second claim was abandoned and formally disclaimed in the Patent Office.

SUPREME COURT OF THE UNITED STATES.

October Term, 1884.

No. 295.

ANTON MILLER et al.
vs.
SAMUEL J. FOREE et al.
} **IN EQUITY.**

Appeal from the Circuit Court of the United States for the District of Kentucky.

BRIEF FOR APPELLANTS.

ABSTRACT OF THE CASE.

This suit was brought in the United States Circuit Court for the District of Kentucky by Anton Miller and Christian Worley, the inventors, and by John Finzer, Frederick Finzer, Rudolph Finzer, and Nicholas Finzer, partners as John Finzer & Brothers, assignees of one-half of inventors' right (Record, pp. 1 and 26), against Samuel J. Foree and Edward J. Foree, partners as Samuel J. Foree & Co., for infringement of complainants' re-issued Letters Patent No. 8,060, granted January 29th, 1878, for a new and useful improvement in marking and finishing tobacco plugs (Record, page 25), and for an injunction and account.

The case was fully heard upon the proofs and arguments of

Supreme Court of the United States,

OCTOBER TERM, 1884.

Anton Miller and Christian Worley, John Finzer, Frederick Finzer, Rudolph Finzer and Nicholas Finzer, Partners as John Finzer and Brothers, Appellants,

vs.

Samuel J. Force and Edward J. Force.

No. 295.

BRIEF FOR THE APPELLEE,

BY

BENJAMIN F. THURSTON.

PROVIDENCE:
E. A. Johnson & Co., Law Printers, 57 Weybosset Street.
1885.

Supreme Court of the United States,

OCTOBER TERM, 1884.

ANTON MILLER AND CHRISTIAN WORLEY, JOHN FINZER, FREDERICK FINZER, RUDOLPH FINZER AND NICHOLAS FINZER, PARTNERS AS JOHN FINZER AND BROTHERS, APPELLANTS, *vs.* SAMUEL J. FOREE AND EDWARD J. FOREE.	No. 295.

BRIEF FOR THE APPELLEE.

This is an appeal from the Circuit Court of the United States, for the District of Kentucky.

The suit is based upon the Reissued Letters Patent, No. 8,060, dated January 29, 1878, granted to Miller and Worley for an improvement in finishing tobacco plugs.

The original patent was dated December 5, 1876, and was numbered 185,119. The supposed invention consists

in a process for marking plug tobacco, consisting in impressing letters or other distinguishing marks into the surface of the plug during the process of manufacture, by utilizing the pressure always employed in shaping tobacco plugs.

For many years it has been customary, in the manufacture of plug tobacco, to subject the plugs, consisting technically of a filler enveloped with a wrapper, to pressure in molds, and for the purpose also of giving a smooth and finished surface to the plugs as well as of compacting the mass of the tobacco. Such plugs have been packed in layers in a strong metallic box or case called a finisher, and between every layer a smooth metallic plate of zinc or some other metal is placed. Heavy hydraulic pressure is then applied to the mass of plugs in the finisher, and the result will be, after two or three hours exposure to such pressure, that the faces of the plugs will become smooth, and the body of the plug dense and compact.

The patentee proposes to place letters in relief upon such plates, which alternate with the layers of tobacco in the finisher, and thereby cause such letters to be impressed into the surface of the plug, so that when the tobacco is removed from the finisher the letters will show in intaglio.

Although the reissued patent was applied for after the expiration of only a little more than a year from the date of the original patent, it will be found, upon a comparison of the original with the reissue, that the invention set forth in the latter is a different invention than that described in the original patent.

To facilitate this comparison the two specifications are arranged in parallel columns, those portions of the origi-

nal which have been omitted in the reissue being enclosed in brackets in the left hand column, and those portions of the reissue which are not found in the original being indicated by italics in the right hand column:

Original Patent, 185,119, December 5, 1876.

Be it known that we, Anton Miller and Christian Worley, both of the city [and county] of St. Louis and state of Missouri, have invented a [certain] new and useful [method of marking tobacco plugs, of which] the following is a full, clear and exact description, [reference being had to the accompanying drawings making part of this specification.]

Our improvement consists in pressing [into the broadside] of the plug (during the process of manufacture [preferably]) letters or [other signs] so as to be ineffaceable.

The main [purpose] is to [prevent false marking of plug tobacco] after it leaves the hands of the [manufacturer.]

In the drawings, figure 1 is a perspective view of the plug of tobacco, showing the impression of the letters in the [broadside] thereof. Fig. 2 is a face view of part of a compress-plate, showing the letters in relief. Fig. 3 is a section through the plug at $x\ x$, Fig. 1, with the impression at bottom. Fig. 4 is a section at $x^1\ x^1$ Fig. 2.

Reissue Patent, 8,060, January 29, 1878.

Be it known that we, Anton Miller and Christian Worley, both of the city of St. Louis, and State of Missouri, have invented a new and useful *improvement in plug tobacco; and we do hereby declare that* the following is a full, clear and exact description *of the same.*

Our improvement consists in pressing *in the side* of the plug, during the process of manufacture, letters or *marks*, so as to be ineffaceable.

The main *object* is to *enable consumers to identify in the plug the tobacco of any manufacturer* after it leaves the hands of the *latter.*

In the drawings, Figure 1 is a perspective view of the plug of tobacco, showing the impression of the letters in the *side* thereof. Fig. 2 is a face view of part of a compress plate, showing the letters in relief. Fig. 3 is a section through the plug at $x\ x$, Fig. 1, with the impression at *the* bottom. Fig. 4 is a section *of the compress plate* at $x^1\ x^1$, Fig. 2.

A is a plug of tobacco, and at B are shown letters impressed in [broadside] of the [plug.] A^1 is the compress-plate, having at B^1 letters in relief, by which the impression at B is formed, [the plugs, in finishing, being packed with alternating plates in the finisher, so that they take their permanent set with the impression in them, so that said impression in ineffaceable.]

In carrying out our [invention]

we have used the process of finishing tobacco as described in patent No. 181,512, issued to Worley and McCabe, on the application of Christian Worley, and dated August 22, 1876.

Our preferred manner of forming the letters on the plates A^1 is by stamping them therein and then making the letters solid by filling in the concave side of the letters with melted metal, such as solder, so that said letters will withstand the extreme pressure to which they are subjected in the finishing-box.

[We do not confine ourselves

A is a plug of tobacco, and at B are shown letters impressed in *the side* of the *same*. A^1 is the compress plate, having at B^1 letters in relief, by which the impression at B is formed.

In carrying out our *process*, *the plugs are packed with alternating plates in the finisher, so that they take their permanent set with the impression in them, whereby said impression is preserved ineffaceable.*

We have used the process of finishing tobacco as described in patent No. 181,512, issued to Worley and McCabe, on the application of Christian Worley, and dated August 22, 1876, *but this system of marking may be used in conjunction with the ordinary finishing process by having the devices in relief on pressure plates used in the last pressing.*

Our preferred manner of forming the letters on the plates A^1 is by stamping them therein, and then making the letters solid by filling in the concave side of the letters with melted metal, such as solder, so that said letters will withstand the extreme pressure to which they are subjected in the finishing-box.

In constructing said com-

to the above-described method of making the compress-plate A[1], for any plate having letters in relief upon it, formed to be easily withdrawn from the impression, would answer the purpose. For instance, a plate with the letters cast upon it, or a plane plate with the letters made separately and afterward fixed on the face of the plate.]

[This system of marking may be used in conjunction with the ordinary finishing process by having the letters in relief on pressure-plates used in the last pressing.]

We do not, of course, confine ourselves to any particular form of words or letters [in the impression B,] as the method may be used in the application of any [trade] mark, [or other sign or word desired.]

[We claim as our invention—]

[The mode of simultaneously stamping and finishing tobacco, consisting of tightly compressing the plugs between plates having in relief letters in alternating series, substantially in the manner described.]

press plate, however, any projecting surfaces in relief, either formed upon the plate or loose from the same, would secure the same result and may be employed.

We do not, of course, confine ourselves to any particular words or letters, as the method may be used in the application of any *distinguishing* mark.

Having thus described our invention, what we claim as new is—

1. The described process of marking plug tobacco, which consists in impressing letters or other marks directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug, substantially as described.

2. A tobacco plug marked with an impression, substantially as described.

It is apparent the reissued patent has been very much enlarged. The original required the letters or other distinguishing marks to form a part of, or to be attached to,

the plates to be packed alternately with the plugs. The reissue ignores the necessity of attaching the letters to the plates, but expressly declares that they may be loose upon the same. The claim in the original was limited to a process in which there should be a series of plugs and a series of plates with relief letters attached thereto, the layers of tobacco and the plates being arranged in alternating series; whereas in the reissued patent the necessity of a series of layers of tobacco and a series of plates is ignored, and the process is broadened so as to cover impressing letters or symbols, whether attached to a plate or not, into a single plug of the series, and the second newly-added claim is to a single tobacco plug marked with an impression without regard to any process by which it was so marked.

Obviously the reissued patent professes to cover and include the marking of a single plug of tobacco with an impression, by pressure used in shaping the plug, at any stage of the manufacture. The process described in the first claim of the reissue is an entirely different process from that described in the claim of the original. The process of the original patent involves the necessity of a mass of plugs arranged in layers and a series of plates alternating with such layers, and a single pressure operating both to stamp letters or a design into the plugs, and "finishing" the plugs simultaneously; whereas the process of the reissue can be performed by impressing letters or a symbol into a single plug at any time during the process of manufacture, and without at the same time finishing the plug.

The effect of this broadened reissue is not only to destroy its validity on well-settled principles of law, which were uniformly recognized by this court prior to the decision of the case of *Miller* v. *Bridgeport Brass Co.*, 104 U. S., 350,

but, in addition, the different process which the reissued patent now states renders applicable for its destruction various acts done by others prior to the supposed invention of the patentees as full and complete anticipations of the claim of invention.

Prior Knowledge and Use by Others.

The record discloses that the process of the reissued patent was, before the supposed invention of the patentees, known to and practiced by various individuals.

In 1868, at St. Louis, C. S. Fisher, a tobacco manufacturer, marked tobacco plugs, while being shaped in the mould, with the word "Blackberry" as a brand or trade mark, and his successor in business, Joseph Boyce, continued to exercise such process from the year 1869 to 1876.

Deposition of Joseph Boyce, Rec. p. 242, Ans. to Ints. 7-24;
" " C. F. Loker, " " 234, Ans. to Ints. 2-13;
" " A. J. Jones, " " 232, Ans. to Ints. 5-20;
" " N. C. Harris, " " 251, Ans. to Ints. 8-14;
" " G. S. Shryock, " " 254, Ans to Ints. 1-6;
" " A. De Jong, " " 261, Ans. to Ints. 4-10;

The existence of the "Blackberry" mould is proved by the complainant's testimony, (Deposition of Maurice Lang, Rec. p. 182, Ans. to Ints. 7 and 8), and the original mould itself is produced as an exhibit in this case, and which was identified by the witnesses Harris, Boyce, Loker and others.

Furthermore, it appears that in the summer of 1875 E. F. Smith, at Evening Shade, Arkansas, commenced to

mark his plug tobacco with the name "E. F. Smith" by means of plates having this name in raised letters upon them, and that he continued this system till he went out of the business, using the plate a portion of the time in the moulds and a portion of the time in the final "finisher," and that he sold the tobacco so marked in the ordinary course of business. This is proved by the deposition of Smith, the manufacturer, (Rec. p. 304–307), by George W. Davidson (Rec. p. 316–319), who is a reputable citizen of the town following the occupation of a jeweler and watchmaker, and who testifies that he made the plate for Mr. Smith in the year 1875, and identifies his own work; and finally by Robert E. Lee (Rec. p. 319), a workman in the employ of Smith, and by Thomas Y. Huddleston (Rec. p. 339–341), for many years the sheriff of the county, and who states his knowledge of the fact that tobacco so marked was upon the market.

One of the witnesses for the complainant confirms the fact that tobacco so marked was upon the market. See deposition of J. R. Metcalfe, p. 146, Ans. to Int. 14.

An earnest effort has been made by the complainant to show that the witness Lee is not worthy of belief in consequence of his doubtful reputation. It is unnecessary, however, to discuss this issue in view of the testimony of Davidson, who made the plate with the letters thereon, and the testimonony of Huddleston as to the existence of plugs of tobacco so marked on sale.

An effort has also been made to show that the "Blackberry" mould would be incapable of leaving a permanent impression in the tobacco. In reply to this the "Black-

berry" stamp has been used for the purpose of making exhibits in this case, and with entire success.

Deposition of S. T. McCormick, Rec. p. 278, Ans. to Ints. 13–20;

Deposition of J. L. Delahunt, Rec. p. 296; also p. 299.

The prior knowledge of the supposed invention thus proved, brings the law of the case cleary within *Coffin* v. *Ogden*, 18 Wall., 124; *Kelleher* v. *Darling*, 4 Cliff., 424; *McNish* v. *Everson*, 2 Fed. Rep., 900; *Gaylor* v. *Wilder*, 10 How., 477.

Anticipation by Prior Patents.

1. English patent to Thomas and George Cope, April 29, 1868. (Rec. pp. 216–219).

This patent is for an improvement in pressing tobacco, in which it is said:

> "This machine is useful for various purposes in manufacturing tobacco; it can be advantageously employed in stamping or forming devices of various kinds on tobacco."

Objection is made that it is stated in this patent that the pressure is exerted for only two seconds, and that this time would be insufficient to give to the tobacco a permanent set. The reply to this is, that the specification discloses that the machine can be used for stamping devices on tobacco during the process of its manufacture; that the character of the tobacco and the necessity for giving it a permanent set under pressure was well known to the art, and that only the common knowledge of manufacturers of tobacco would be required to extend the duration of the

pressure in case the time named in the patent was insufficient.

2. Letters Patent to Charles Seidler, October 24, 1876. (Rec. p. 226.)

This is a patent for marking plug tobacco with a metal tag impressed directly into the side of the plug during the process of manufacture, and by the pressure employed in making the plug.

In this instance the distinguishing mark, letters, or symbol was a plate which was left impressed in the plug instead of being removed from the plug. It could hardly be said to be invention, after the Seidler patent, to remove the tag from the plug, and thus leave in the face of the plug the impression which the plate necessarily made.

3. English Letters Patent to Gibson and Kennedy, April 30, 1874. (Rec. pp. 220–223.)

This patent relates to heating, pressing, and curing tobacco, and it is distinctly stated that "a thin metal plate bearing the manufacturer's name, abode, trade-mark, or mark of quality" is applied to tobacco while under treatment; and it is further stated that after the manufacturing operation is completed "the name tablets are separated from the tobacco and the tobacco is found to be impressed with the name or marks from the tablets, the raised features of the surface having the impression of the wooden disc smooth, or showing the grain of the timber."

In view of this patent it is certainly impossible to say that the invention set forth in the reissued process claim

can possess any validity. The treatment of the tobacco and the process, as a whole, described in the Gibson and Kennedy patent, involves more than the process set forth in the patent in suit, because it embraces the curing and treatment of tobacco.

An argument could be made as to whether this patent would be a direct answer to the claim of the process in the original patent, involving, as such claim did, a series of layers of tobacco and a series of marking plates arranged alternately with the layers of tobacco, and a simultaneously-performed stamping and "finishing" operation; but it is clear that the Gibson and Kennedy patent fully meets the enlarged reissued claim, which disregards all the limitations of the original process and embraces broadly the stamping of plug tobacco at any time during the process of manufacture by any pressure employed in the process.

The Reissued Patent is Invalid in Consequence of the Employment of Substantially the Same Process in Analagous Manufactures.

It appears from the record, and it is a matter of common knowledge, that cakes of soap. (English Letters Patent of 1854 to Gerard for Cutting and Stamping Soap, Rec. p. 223), cakes of chocolate, bars of lead, balls of butter, sealing wax, the backs and covers of books, and a great variety of articles are marked by indenting their surfaces with designs of every conceivable form. The reissued patent, as we have shown, has been enlarged to such a

degree as to cover the process of impressing into a single plug of tobacco letters or designs by means of pressure employed at some stage in the shaping of the tobacco plug. It is impossible to escape the charge that such process exhibits nothing patentable, in view of the common knowledge of mankind above referred to, by saying that tobacco readily absorbs moisture, and that unless it is subjected to very heavy pressure, so that it acquires a permanent set, any impression made upon its surface will be evanescent, and that the invention in the patent in suit involves for its exercise a degree of pressure so great and so long continued as to take butter-pats, chocolate-cakes, and a thousand other things that are impressed with designs fanciful in form or designative of origin, out of the category of anticipations, because in the manufacture of such articles a slight pressure is only required to produce an impression upon their surfaces. The quality or character of the material or substance which is to bear the designative mark for trade purposes or for ornament does not enter into the question. The degree of pressure to be applied in any given case, and the length of time such pressure is to continue, belongs properly to the judgment of the workmen, and is governed necessarily by the character of the material to be operated upon. When a lump of butter is put into a mould and pressed into a pat by means of a wooden die, in the face of which an ornamental figure or design is cut, the operation which is performed is as truly a "finishing" operation as that which is employed when a plug of tobacco is subjected in a finisher box to heavy hydraulic pressure The difference between the butter and the tobacco, when both have been impressed with the same letters or designs, is only such difference as is due to the physical characteristics of the two substances.

The process by which the operation of impressing designs on their respective surfaces is performed is the same.

Brown v. *Piper*, 91 U. S., 37;
Terhune v. *Phillips*, 99 U. S., 592;
Spill v. *Celluloid Co.*, 21 Fed. Rep., 631.

It is therefore respectfully submitted that the decree of the Circuit Court for the District of Kentucky in this case should be affirmed.

B. F. THURSTON,
Counsel for the Appellee.